

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Verizon Petition for Declaratory Ruling	)	
Regarding Fees Charged by Clark County,	)	
Nevada for Small Wireless Facilities	)	WT Docket No. 19-230

**OPPOSITION OF CLARK COUNTY, NEVADA**

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September 25, 2019

## EXECUTIVE SUMMARY

It is not clear that this matter is properly before the Commission. Petitioner joined the County in requesting that the matter be held in abeyance and further has acknowledged that they are not subject to the terms of the ordinance. The County and Petitioner entered into a master license agreement, the terms of which are being honored by the County. So there is no aggrieved party before the Commission.

Petitioner's claim is that Clark County is prohibiting or effectively prohibiting the provision of protected services in violation of Section 253(a) of the Communications Act because the fees established in the County's small cell ordinance do not conform to the FCC's presumptively reasonable annual \$270 small wireless facility charge and that the fees that are charged are not limited to the recovery of reasonable costs. Petitioner is incorrect for the following reasons:

- Clark County has joined other local governments in challenging the FCC's claim that just and reasonable compensation as provided by Sections 253 and 332 is limited to the recovery of reasonable costs. This is not, however, the basis of the County's opposition to the Petition.
- Petitioner is actively providing services in the County, which in and of itself contradicts any allegation that the County is prohibiting, or effectively prohibiting, the provision of services in the County. Moreover, as the County will demonstrate, the plan it developed was a protected Section 253(c) rights-of-way management exercise that seeks to accommodate the thousands of small cell location requests small cell providers, such as Petitioner, told the County it should anticipate receiving.
- The County's recurring fees are based on current and anticipated reasonable costs for accommodating not just Petitioner, but the thousands of other small cell location requests carriers are representing that they will need within the County. The Petition inaccurately alleges that the rates are market-based and cites as its documentation for that claim a presentation made nine months prior to the Commission's September 2018 Small Cell Order, and more than a year before the County adopted the ordinance in question.
- The County will demonstrate through documentation that the fees it is charging are cost-based and adopted only after almost two years of input and dialogue with the wireless industry. Moreover, as the expert agency on costs in the County, the Clark County Board of County Commissioners is entitled to deference in its findings.
- The County will actively participate in this proceeding as a means to defend its actions and show that it has sought to be in compliance with the FCC's orders despite questioning their legality. Still, Section 253(d) only grants the Commission authority to preempt violations of Section 253(a), not to judge specific fee amounts alleged to be protected by Section 253(c) as being unreasonable. That is a question for a court to decide.
- Finally, in proving that Clark County rates are cost-based, the County will demonstrate that the FCC's presumptively reasonable annual small wireless facility charges are

woefully inadequate. A review of the record reveals that no cost analysis was conducted by the FCC in establishing the \$270 rate. It is clear that the Commission based its analysis on what the various states were providing for recurring costs. But a review of the record at the state level fails to review any cost analysis. Therefore, the FCC's rate is not grounded in analysis, and therefore a deviation from the rate should not be the *prima facie* test for violating the FCC rules, as it appears to be treated by the Petition.

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## I. INTRODUCTION

Clark County, Nevada (the “County”) opposes the Petition for Declaratory Ruling whose filing gave rise to the above-captioned proceeding. Clark County is deeply disappointed that, despite ongoing litigation<sup>1</sup> against the Federal Communications Commission’s (“Commission”) October 2018 Small Cell Order,<sup>2</sup> and despite the express agreement and request of the parties to suspend this dispute,<sup>3</sup> the Commission has insisted on pushing this matter forward and threatening the ability of the parties to reach the kind of negotiated compromise expressly contemplated by Petitioner in its cover letter attached to the Petition.<sup>4</sup> The Commission previously endorsed efforts to find such mutually agreeable settlements, yet now insists on pushing this proceeding forward regardless of the parties’ wishes.<sup>5</sup>

The County submits this opposition to the Petition to preserve its rights before the Commission and the courts, but emphasizes that its strong denial of accusations raised in the underlying Petition should not be read as conveying animus toward Petitioner. The County and Petitioner continue productive negotiations to resolve this dispute, as indicated in the County's prior filing requesting, with Petitioner's agreement, a delay in this proceeding to permit a

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<sup>1</sup> Clark County has joined dozens of local governments nationwide in challenging the Commission’s September 2018 Small Cell Order, including that Order’s claim that “just and reasonable compensation” as permitted by law is nevertheless limited solely to recovery of reasonable costs. The numerous flaws in the framework under which the Commission continues to address rights-of-way management issues are not, however, the basis of the County’s opposition to the Petition.

<sup>2</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, WT Docket No. 17-79, WC Docket No. 17-84, 33 FCC Rcd. 9088 (2018) (“*Small Cell Order*”).

<sup>3</sup> See Ex Parte Letter from Gerard Lavery Lederer, WT Docket No. 19-230 (Sept. 6, 2019).

<sup>4</sup> Petition for Declaratory Ruling that Clark County, Nevada Ordinance No. 4659 Is Unlawful under Section 253 of the Communications Act as Interpreted by the Federal Communications Commission and Is Preempted, WT Docket No. 19-230, at i (filed Aug. 8, 2019) (“...we continue to prefer a negotiated solution...”).

<sup>5</sup> This new attitude stands in contrast to the Small Cell Order, in which the Commission espoused a hope “that the steps taken in this order are intended to facilitate cooperation between parties to reach mutually agreed upon solutions.” Small Cell Order at ¶131.

negotiated resolution.<sup>6</sup> The Commission's denial of this request evidences an apparent desire to make an example of the County, regardless of whether the parties can resolve their dispute themselves or whether the Commission is on solid legal footing in micromanaging local governmental affairs in the manner contemplated by this Petition.

Notwithstanding the existing Master License Agreement under which the parties continue to operate productively<sup>7</sup> (and under which Petitioner continues to provide service, rendering puzzling any assertion of an "effective prohibition" as required by the Act), and notwithstanding the parties' ongoing negotiations, the Commission has forced this process forward. The County is therefore compelled to respond in opposition, but does not view the Commission's disregard for the complaining party's position as reflective of Petitioner, who have thus far worked with the County in good faith.

The County notes that Petitioner bears the burden under Section 253(a) of the Communications Act of demonstrating that it has been effectively prohibited from providing service.<sup>8</sup> In the event that Petitioner is found to have met this burden, the County's program and fees may still fall within the Section 253(c) safe harbor for rights-of-way management techniques and "fair and reasonable compensation."<sup>9</sup> However, this Section 253(c) determination may only be made by a court, and not the Commission.<sup>10</sup> This Opposition will demonstrate that the County's program seeks to ensure universal and continuous access to the County's vertical infrastructure in the rights-of-way and that the fees assessed are based on reasonable costs. The

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<sup>6</sup> See Ex Parte Letter from Gerard Lavery Lederer, WT Docket No. 19-230 (Sept. 6, 2019).

<sup>7</sup> Exhibit A, Declaration of Jacqueline Holloway, Director of Business License, Clark County, Nevada, at ¶16 ("Holloway Declaration").

<sup>8</sup> See 47 U.S.C. § 253(a); *Puerto Rico Tel. Co. v. Municipality Of Guayanilla*, 450 F.3d 9, 21 (1st Cir. 2006).

<sup>9</sup> 47 U.S.C. §253(c); *Puerto Rico Tel Co.*, 450 F.3d at 21.

<sup>10</sup> See *infra* Section IV.A.

County small cell program does not “effectively prohibit” the provision of service, and furthermore is protected by the savings clause of Section 253(c).

## **II. FACTUAL BACKGROUND.**

### ***A. The need to respond to immense growth in siting requests.***

The County experienced an alarming 3000% increase over the prior 10-year average in requests for small cell installations in its rights-of way in 2016. Between October and December 2016, the Chairman of the Clark County Board held two meetings with members of the wireless industry regarding the status of wireless communications facilities within the County.<sup>11</sup> In early 2017, wireless industry officials voiced concerns about the County’s ability to process their requests, which were going to exponentially increase in the coming years. On May 16, 2017, the Board approved a contract with the consultants Connected Nation Exchange (now known as SmartWorks Partners) for the purpose of implementing a small cell siting program.<sup>12</sup>

SmartWorks Partners was engaged to develop a comprehensive program governing small cell deployment, specifically intended to ensure the County was well-positioned to facilitate deployment of next-generation wireless technologies while protecting its rights and responsibilities with respect to the County’s residents, visitors, property value, economic development, and aesthetics of County rights-of-way. Clark County, like all local governments nationwide, is responsible for operational control and asset management of public rights-of-way. Local leaders have a fiduciary duty to their constituents to administer these limited resources in a manner that protects constituents’ interests, preserves public safety, and maximizes benefit to the citizens. These actions, by their nature, involve costs, particularly in complex environments such as Clark County where tourism is a leading industry, and the County must manage its rights-of-

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<sup>11</sup> Holloway Declaration at ¶2.

<sup>12</sup> *Id.* at ¶4.

way to account for a broader set of considerations than the interests of wireless carriers alone.<sup>13</sup>

The Commission has made it clear that, at minimum, providers can be expected to bear all reasonable costs localities incur in managing their rights-of-way and making them available for those companies' use.<sup>14</sup>

***B. The County pursued a collaborative process including substantial industry input in developing its program with the assistance of expert consultants.***

Following months of meetings with industry, researching best practices in other communities, and having the benefit of the Commission's thinking on small cells as a member of the FCC's Broadband Deployment Advisory Council, SmartWorks presented its recommendations to the Board of County Commissioners on December 19, 2017. SmartWorks' presentation included the presentation submitted by Petitioner as the basis for its claim that the fees set in the ordinance were market-based rates, not cost-based. But that presentation was made almost ten months before the Commission issued the Small Cell Order limiting localities to recovery of costs. This approach, therefore, was consistent with the law in effect at that time. As the Board of County Commissioners minutes clearly show, the Board merely received a report at that time; no action was taken to implement a fee structure as a result, nor was any fee structure ultimately adopted for more than a year after that presentation was made.<sup>15</sup>

Throughout 2018, the County worked with SmartWorks Partners and with numerous wireless industry representatives, including Petitioner, to develop the ordinance and related materials.<sup>16</sup> The program ultimately adopted, and now in the process of implementation, includes not only a streamlined permitting and centralized standards for deployment of infrastructure

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<sup>13</sup> For-profit companies do not have unbridled access and discretion over taxpayer's assets, even when those are located in the public rights-of-way.

<sup>14</sup> Small Cell Order at ¶50.

<sup>15</sup> See Exhibit B, Transcript of December 19, 2017 Clark County County Board of County Commissioners Meeting, Agenda Item 74.

<sup>16</sup> Holloway Declaration at ¶8.

County-wide, but also incorporated an ongoing Department of Public Works project involving installation of wireless-ready smart poles and extensive conduit runs available for private industry use within high-demand rights-of-way along the Las Vegas Strip.<sup>17</sup> This investment of millions of dollars in capital directly benefits providers by saving time and reducing complexity as they seek to deploy in the County's most in-demand locations.

Other aspects of the program include ongoing monitoring and inspections of small cell deployments to verify compliance with permit terms including compliance with Commission RF standards. The need for an inspection program was an outgrowth of an audit performed by the County on 150 existing small cell sites, in which it was determined that 90% of the sites were out of compliance with their associated Master License Agreements, and 50% were out of compliance with their associated County permits.<sup>18</sup> The County set the inspection fee based on its estimated costs in conducting an inspection program.<sup>19</sup> The inspection program will allow the County to compare wireless facilities as constructed against what each encroachment permit allowed, to ensure compliance.<sup>20</sup>

The Board of County Commissioners was briefed on the status of the wireless ordinance from August 2018 through September 2018.<sup>21</sup> On September 11, 2018, the proposed wireless ordinance was posted on the County's website, and industry members were notified via e-mail of a public meeting regarding the proposed ordinance.<sup>22</sup> The public meeting was then held on

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<sup>17</sup> Exhibit F, Diagrams Depicting Planned Smart Pole and Conduit Deployment Along Las Vegas Boulevard.

<sup>18</sup> Holloway Declaration at ¶15.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at ¶8.

<sup>22</sup> *Id.*

September 20, 2018, at which time the ordinance was explained to the public and industry members were invited to comment on the proposed ordinance.<sup>23</sup>

On October 4, 2018, a Business Impact Notification and a revised draft of the wireless ordinance were posted on the County's website and emailed to industry members, along with a November 2, 2018 deadline for comments on the same.<sup>24</sup> On October 15, 2018, two separate public meetings were held by the County, one with third party providers, and one with carriers only.<sup>25</sup> In both public meetings, industry members provided general comments on the proposed ordinance regarding pricing, the FCC's rules, and stealth concerns.<sup>26</sup> The following day, October 16, 2018, the County held another public meeting to specifically address engineering concerns related to the proposed ordinance. Industry members provided general comments regarding the FCC's rules and stealth concerns.<sup>27</sup>

***C. The County delayed adoption of its ordinance to permit still more industry input, and to revise its program in direct response to the Small Cell Order.***

On November 2, 2018, the deadline for commenting on the Business Impact Statement, three industry responses were received by the County.<sup>28</sup> These responses predominantly suggested changes based on the FCC Small Cell Order.<sup>29</sup> On November 20, 2018, the County delayed inclusion of the proposed wireless ordinance on the County Commission Agenda so that adequate consideration could be given to the industry responses.<sup>30</sup> Several of the changes

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at ¶9.

<sup>25</sup> *Id.* at ¶10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at ¶11.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at ¶12.

requested by the industry were then made.<sup>31</sup> On December 3, 2018, industry members submitted a joint memorandum requesting that consideration of the wireless ordinance be delayed until after January 14, 2019, stating that the FCC Small Cell Order would likely be stayed, and stating that additional time was needed to meet with each County Commissioner.<sup>32</sup> On December 4, 2018, the County approved the Business Impact Statement and introduced the wireless ordinance for adoption.<sup>33</sup>

On December 18, 2018, the County conducted a public hearing to adopt and approve, and authorize the County Chairman to sign, the proposed wireless ordinance.<sup>34</sup> As part of County staff's presentation at that meeting, a SmartWorks representative shared with the Board and the public a detailed breakdown of the costs the County would incur in implementing the program, and how they translated into the proposed application fee structure.<sup>35</sup> Clark County Director of Business License Jacqueline Holloway also told the Board that the ordinance's purpose was, in part, to "recover public costs of permitting industry use of the County rights-of-ways."<sup>36</sup>

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<sup>31</sup> *Id.*; see also Exhibit C, Chart Documenting Changes Made to Draft Ordinance In Direct Response to Industry Comments.

<sup>32</sup> Holloway Declaration at ¶13.

<sup>33</sup> *Id.* at ¶14; see also Exhibit L, Business Impact Statement Approved December 4, 2018. The Business Impact Statement specifically noted that the program was intended to "recover public costs of permitting private use of County Rights-of-Way." *Id.* at 2. Furthermore, "In order for the County to be prepared to meet this significant increase in the demand for small cell site locations within the County's Rights-of-Way, the County needs to plan now for a robust program to manage these sites and the County's assets in the Rights-of-Way and the County will need to cover the increased costs related to this effort." *Id.* at 13.

<sup>34</sup> *Id.*

<sup>35</sup> See Exhibit G, Transcript of December 18, 2018 Clark County Board of County Commissioners Meeting, Agenda Item 61, at 6-7 (describing the cost data presented to the Board and attached hereto as Exhibit D); see also Exhibit D, Cost Data Presented to the Board of County Commissioners on December 18, 2018. The presentation of this material to the Board and to the public may be viewed in the County's online recording of that Board meeting, available at the following web address starting from timestamp 1:51:40:

[https://clark.granicus.com/MediaPlayer.php?view\\_id=17&clip\\_id=6106&meta\\_id=1247578](https://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=6106&meta_id=1247578).

<sup>36</sup> Exhibit G at 2.



Representatives of several wireless companies were present at that meeting. Director Holloway also told the Board that the “more sophisticated program management” contemplated would “streamline the process” of wireless deployment.<sup>37</sup> In answering questions posed by the Board, Director Holloway emphasized that “the discussion should be focused on costs” in setting permit fees.<sup>38</sup>

In response to the industry requests, the County continued the public hearing until January 7, 2019, at which time the County Board could take action if it so chose.<sup>39</sup> It was agreed the interim time would be used to elicit additional industry comments, including holding an additional industry meeting to resolve issues still outstanding, such as technological concerns voiced by industry members.<sup>40</sup> This final meeting took place on December 26, 2018 and was attended by over thirty participants.<sup>41</sup> Numerous changes to the final ordinance were adopted as a result of this and other meetings with industry representatives and the Commission’s Small Cell Order, and the final ordinance directly states that fees are intended to reflect the County’s anticipated costs.<sup>42</sup>

The wireless ordinance was subsequently adopted via public hearing on January 7, 2019.<sup>43</sup> The agenda item discussing adoption of the proposed ordinance specifically stated that the “fees are anticipated to offset the County’s program management costs to monitor, maintain, and enforce the deployment of wireless communications facilities within the rights-of-way.”<sup>44</sup>

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<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.* at 24.

<sup>39</sup> Holloway Declaration at ¶14.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *See* Clark County Code Sec. 5.02.01(E)

<sup>43</sup> *Id.*

<sup>44</sup> *See* Exhibit E, Clark County Board of Commissioners Agenda Item #43, January 7, 2019.

### **III. PETITIONER’S CONTINUED OPERATION OF SMALL CELLS IN CLARK COUNTY RIGHTS-OF-WAY DISPROVES ITS CLAIM OF EFFECTIVE PROHIBITION.**

In order to prove a violation of Section 253(a), it must be shown by the complaining provider that a local action “prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>45</sup> It logically follows, therefore, that where a provider is able to provide service, there can be no finding of a prohibition or effective prohibition under Section 253(a).

In 2015, Petitioner and the County entered into a Wireless Use License Agreement, attached hereto as Exhibit I, pursuant to which the County and Petitioner have cooperated for several years to facilitate deployment of Petitioner’s small cell facilities in County rights-of-way.<sup>46</sup> During these proceedings, the County and Verizon continue to honor the terms of this agreement.<sup>47</sup> Petitioner operates more than 400 cell sites in Clark County, including 99 small cells.<sup>48</sup> County records indicate Petitioner operates 26 small cells in County rights-of-way under its existing Master License Agreement.<sup>49</sup> Petitioner’s payment of the Business License Tax demonstrates clearly that these facilities are not merely for show – the carrier provides service to

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<sup>45</sup> 47 U.S.C. §253(a).

<sup>46</sup> See Exhibit I, Wireless Use License Agreement Between Clark County, Nevada, and Southwestco Wireless LP, d/b/a Verizon Wireless.

<sup>47</sup> See Holloway Declaration at ¶16.

<sup>48</sup> Petition at 7.

<sup>49</sup> Petitioner asserts it operates 99 small cells in the County. The 73 not operated directly by Petitioner are therefore presumably operated by third party wireless infrastructure providers whom Petitioner pays for use of their infrastructure. Though the agreements between carriers and infrastructure providers are closely guarded, it is the County’s understanding that the annual fees paid by carriers to infrastructure providers, on a per-site basis, are significantly higher than \$270 per year. If, as the Commission alleges, any rate charged above costs is prohibitory then the Commission should, as part of any inquiry addressing fees, determine whether the rates alleged to be prohibitory are lower than those paid to third party infrastructure providers in the same market. Common sense dictates that if a carrier can provide service by paying a certain amount to a third party, it cannot be possible for a local government to nevertheless effectively prohibit service while charging any amount lower than that sustainable to be paid to a private infrastructure provider.

tens of thousands of County residents, and hundreds of thousands of visitors, every year. It defies reason, therefore, for Petitioner to assert that it is prohibited, or “effectively prohibited,” from providing service. The Act requires there be some prohibition – Petitioner identifies no service it is unable to provide, and provides no evidence of prohibition or effective prohibition. It merely asserts, with conclusory statements, that because the County’s fee schedule is not within the Commission’s arbitrarily established safe harbors, an effective prohibition necessarily results. Notwithstanding the veracity of Petitioner’s other factual assertions, the Commission simply cannot rationally entertain a claim of effective prohibition when in the opening paragraphs of the Petition, the Petitioner describes its success in providing service in the County. The Commission must dismiss the Petition as it is unsupportable given Petitioner’s own factual statements.

**IV. CLARK COUNTY’S FEE STRUCTURE DIRECTLY REFLECTS ITS CURRENT AND ANTICIPATED COSTS; IS A PROTECTED FORM OF RIGHTS-OF-WAY MANAGEMENT UNDER 47 U.S.C. 253; AND IS A GOOD-FAITH EFFORT TO AVOID VIOLATING FEDERAL LAW.**

***A. The County can easily demonstrate that the actions complained of in the Petition are protected under Section 253(c).***

In bringing a claim under Section 253,<sup>50</sup> Petitioner bears the burden of proving an effective prohibition under Section 253(a).<sup>51</sup> Even if the Commission were to decide that

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<sup>50</sup> Both the Commission and Petitioner presume that Section 253 may be applied to wireless facilities and services, despite clear language in 47 U.S.C. §332(c)(7)(A) specifying that “Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.” The question of the Commission’s proper interpretation of this clause is, among other issues, before the Ninth Circuit in litigation to which the County is a party. For purposes of the proceeding, the County will apply the Commission’s interpretation, but does not concede its correctness, or the validity of the Commission’s holding that Section 253’s provisions apply to providers of wireless infrastructure and services not classified as telecommunications services.

<sup>51</sup> *Puerto Rico Tel. Co. v. Municipality Of Guayanilla*, 450 F.3d 9, 21 (1st Cir. 2006); *Qwest Corp. v. City of Santa Fe, New Mexico*, 380 F.3d 1258, 1273 n. 10 (10th Cir. 2004); *New Jersey Payphone Ass’n, Inc. v. Town of W. New York*, 299 F.3d 235, 240 (3d Cir. 2002); *New York State Thruway Auth. v. Level 3 Commc’ns, LLC*, 734 F. Supp. 2d 257, 264 (N.D.N.Y. 2010).

Petitioner has carried its burden, the County's fees may still fall within the safe harbor Congress provided local governments in Section 253(c)<sup>52</sup>:

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.<sup>53</sup>

From the statute's plain language, the County's fees are protected by Section 253(c) if they constitute "fair and reasonable compensation" for use of its rights-of-way. In order to qualify as such, fees should be related to the actual use of rights-of-way, and "the costs of maintaining those rights of way are an essential part of the equation."<sup>54</sup> The courts have upheld fees as "fair and reasonable compensation" even when they exceed a locality's costs.<sup>55</sup>

The Commission itself has recognized Section 253(c) as "a savings clause" and acknowledged that it "provides that state or local action *that otherwise would be subject to preemption* under Section 253(a) may be permissible if it meets [Section 253(c)'s] criteria."<sup>56</sup> In addition, a review of the congressional record for the Telecommunications Act reveals that Section 253(c) is the product of Congress' belief that "companies should have to pay a fair and reasonable rate to use public property."<sup>57</sup> Thus, while Section 253 does provide for preemption of certain state and local actions, compensation is an area in which Congress deliberately chose not to preempt localities, so long as that compensation is "fair and reasonable" and charged on a nondiscriminatory basis.

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<sup>52</sup> *Id.*

<sup>53</sup> 47 U.S.C. § 253(c).

<sup>54</sup> *Puerto Rico Tel. Co.* 450 F.3d at 21.

<sup>55</sup> See, e.g., *Qwest Corp.*, 380 F.3d at 1272; *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 624-25 (6th Cir. 2000); *City of Portland, Or. v. Elec. Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1062 (D. Or. 2005).

<sup>56</sup> *Small Cell Order* ¶71 (emphasis added).

<sup>57</sup> 141 Cong. Rec. H8460-01 (Aug. 4, 1995).

***B. The Commission lacks authority to evaluate the County's costs for consistency with Section 253(c); Congress expressly withheld that power from the Commission and reserved it instead for the courts.***

As this Opposition demonstrates, the County's fees were derived from its costs associated with managing its rights-of-way. As a result, Section 253(c)'s safe harbor applies. Furthermore, even if Petitioner had made a *prima facie* case for effective prohibition, and the Commission agreed, and sought to preempt using its authority in Section 253(d), the statute nevertheless does not grant the Commission authority to judge what constitutes reasonable rights-of-way management practices protected by the Section 253(c) safe harbor. Section 253(d) only grants the Commission authority to preempt violations of Section 253(a), not to judge whether specific fee amounts alleged to be protected by Section 253(c) are "fair and reasonable."

This limitation on the Commission's preemption authority is clear from the plain language of the statute,<sup>58</sup> as well as from the statute's legislative history. When Congress initially drafted Section 253(d), it granted the Commission broad authority to preempt "any statute, regulation, or legal requirement that violates or is inconsistent with *this section*," with "this section" referring to Section 253 in its entirety.<sup>59</sup> However, Senators Dianne Feinstein and Dirk Kempthorne were concerned about imposing excessive costs on localities by forcing them to

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<sup>58</sup> "If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates *subsection (a) or (b)*, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency." 47 U.S.C. § 253(d) (emphasis added).

<sup>59</sup> The full text of the original Section 253(d) read: "If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent *with this section*, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency." S. Rep. No. 104-23, at 96 (1995) (emphasis added).

defend Section 253 disputes in Washington, DC.<sup>60</sup> They introduced an amendment to the bill for the purpose of “striking the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.”<sup>61</sup> Senator Slade Gorton responded to the Feinstein-Kempthorne Amendment by introducing an amendment of his own, intended to serve as a compromise to those members of the Senate that felt that Section 253 disputes belonged at the Commission. This compromise excluded Section 253(c) from the Commission’s preemption authority, thereby “retain[ing] not only the right of local communities to deal with their rights of way, but their right to meet any challenge on home ground in their local district courts.”<sup>62</sup> Senator Gorton’s amendment was ultimately adopted by the conference committee and became what is now Section 253(d).<sup>63</sup>

As a result of this clear legislative history,<sup>64</sup> several courts have recognized that determinations related to Section 253(c) are reserved to the courts, not the Commission.<sup>65</sup> The Commission is therefore without authority to determine whether the County’s fees are “fair and

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<sup>60</sup> “That means that cities will have to send delegations of city attorneys to Washington to go before a panel of telecommunications specialist[s] at the FCC, on what may be [a] very broad question of State or local government rights. In reality, this preemption provision is an unfunded mandate because it will create major new costs for cities and for States.” 141 Cong. Rec. S8170 (1995) (statement of Sen. Feinstein).

<sup>61</sup> 141 Cong. Rec. S8305 (1995).

<sup>62</sup> 141 Cong. Rec. S8308 (1995) (statement of Sen. Gorton).

<sup>63</sup> S. Rep. No. 104-230, at 16 (1996).

<sup>64</sup> For further discussion of the development of Section 253 and Congress’ clear intent to exclude Section 253(c) from the Commission’s preemption authority, see Frederick E. Ellrod III and Nicholas P. Miller, *Property Rights, Federalism, and the Public Rights-of-Way*, 26 Seattle U. L. Rev. 475, 480, 513-525 (2003) (“Congress removed these questions from the FCC’s jurisdiction in an effort to avoid ‘federalizing’ local public rights-of-way, which would have occurred if the FCC had been made the arbiter of whether local management and compensation conditions fell within the section 253(c) safe harbor.”)

<sup>65</sup> See, e.g., *BellSouth Telecomm. Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1189 (11th Cir. 2001); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 623 (6th Cir. 2000).

reasonable” under Section 253(c), and must instead limit its determination to whether the fees constitute an “effective prohibition” under Section 253(a). As Petitioner continues to provide service in the County, and makes no claim of prohibition on any basis other than fees protected by Section 253(c), no finding of “effective prohibition” is possible here.

***C. The County’s annual fees for individual small cell installations directly reflect the reasonable current and anticipated costs resulting from a planned, programmatic approach to maximizing wireless deployment and managing the public rights-of-way, consistent with the Communications Act, and including County-driven investment in infrastructure to speed and smooth deployment.***

In anticipation of the small cell tsunami heading its way, and in a desire to ensure that, as one of the most visited communities in America it would also be one of the most connected, the County undertook a comprehensive small cell siting program more than a year before the FCC’s Small Cell Order was adopted.<sup>66</sup> The purpose of the program was to:

- Identify the current and future impact of small wireless facilities in the County rights-of-way;
- Develop a plan for efficient and deployment-friendly utilization of the rights-of-way; and
- Implement a framework through an ordinance, license agreement, and fee schedule to ensure the County was well-positioned to facilitate deployment of next-generation wireless technologies while protecting its rights and responsibilities with respect to County property and the aesthetics of County rights-of-way.<sup>67</sup>

Ultimately, the County’s adopted ordinance reflected these goals, and specified in its purpose that, among other objectives, it sought to “[r]ecover public costs of permitting private

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<sup>66</sup> See Section II, *suppa*.

<sup>67</sup> See Holloway Declaration at ¶4.

use of County Rights-of-Way.”<sup>68</sup> Similarly, the Business Impact Statement developed with industry input in the course of developing the ordinance specified that the program was intended to “recover public costs of permitting private use of County Rights-of-Way.”<sup>69</sup> Furthermore, “[i]n order for the County to be prepared to meet this significant increase in the demand for small cell site locations within the County's Rights-of-Way, the County needs to plan now for a robust program to manage these sites and the County's assets in the Rights-of-Way and the County will need to cover the increased costs related to this effort.”<sup>70</sup>

The County’s consultants, SmartWorks Partners, developed a program to meet the anticipated needs of the carriers, which includes significant County investment in conduit and wireless-ready poles in areas where high numbers of small cell were anticipated to be requested. And absent the County investment, it was not clear that such highly trafficked areas could both meet the mandate of Section 253(a) while preserving the investment-backed aesthetics of areas such as the Las Vegas Strip. The County sought to establish a “small cell welcoming environment” to effectively facilitate wireless deployment throughout the County, but especially

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<sup>68</sup> Clark County Code Sec. 5.02.01 specifies, in whole, that “The purpose of this chapter of the code is to:

- (A) Establish a local policy concerning Rights-of-Way management for Wireless Communications Facilities.
- (B) Permit and manage reasonable access, in a nondiscriminatory manner, to Rights-of-Way in unincorporated Clark County for Wireless Communications Facilities.
- (C) Manage physical capacity of the Rights-of-Way held in public trust by the County.
- (D) Establish design standards to provide for a consistent and aesthetically pleasing appearance of Wireless Communications Facilities in the County Rights-of-Way within specific, defined districts.
- (E) *Recover public costs of permitting private use of County Rights-of-Way.*
- (F) Ensure all providers of Wireless Communications Facilities within the County comply with all ordinances, rules and regulations of the County.” (emphasis added)

<sup>69</sup> Exhibit L at 2/

<sup>70</sup> *Id.* at 13.



in high demand areas, by means of a master license agreements and an ordinance. That plan sought to ensure that carriers could serve their customers in the County, and that the County's costs in developing, implementing, and administering such a program, and in making capital investments to streamline deployment in high-demand areas, would be recouped by means of recurring costs collected on an annual basis. The Petition provides as its evidence to the contrary a presentation dated December 2017 – nine months before the Small Cell Order was adopted, and more than a year before it took effect, but even more importantly, a presentation of a program that was not ultimately adopted by the County. Several of the recommendations included in the report are not present in any form in the ordinance, while others are substantially revised. The Petition omits evidence from Board of County Commissioners meetings discussing the ordinance ultimately adopted, which specify that the fees in question were developed to reflect the County's costs.<sup>71</sup>

The Petition suggests, without evidence, that the County and its consultants changed nothing about their plans following the Small Cell Order's adoption. The Petition is in error. Industry commenters submitted public comments and recommended changes to the ordinance, a number of which were adopted, and the County delayed adoption of the ordinance to incorporate industry concerns and recommendations. The final ordinance adopted was not based on SmartWorks' 2017 presentation. The recommendation upon which Petitioner rests its case – namely, the 2017 statement that the County should recover market value for its rights-of-way – was never adopted, and the ordinance ultimately adopted in fact directly states that its purpose is to recover the County's costs.<sup>72</sup>

The Board was told that the five-year annual average cost to administer each small cell

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<sup>71</sup> See Exhibit E at 6-7.

<sup>72</sup> Clark County Code Sec. 5.01.02(E).

site, including all project management, administration, application, permitting, construction, and inspection services, would be \$2,700 per year, including presumptive decreases in administrative burden after the initial installation of a facility.<sup>73</sup> And in cases, such as the Las Vegas Strip, where the County plans installation of new conduit and dedicated smart poles to facilitate convenient deployment, the turnkey cost to the County per pole would be approximately \$24,834.<sup>74</sup> Wireless providers like Petitioner directly benefit when communities like Clark County invest in broadband infrastructure, and the Commission has made it clear that all reasonable costs may be passed on directly to their beneficiaries.<sup>75</sup> The County's fees reflect this fact. In total based on expected deployment, the County's consultants estimated an annual total cost of \$2,700 per site to the County.<sup>76</sup> As these costs may vary depending upon the location (i.e. whether or not a smart pole and additional capital investment from the County is intended), the County opted instead to take a more nuanced approach to recovering its costs.

Specifically, the County's three-tiered rate structure imposes elevated rates in those areas where elevated costs are incurred (though still well below the estimated per-pole cost for each such location), while only assessing a \$700 per site fee in areas where deployment is necessary but does not implicate the County's capital investments. As the County's costs are \$2,700 per site, on average, the County's rates are in fact below their projected costs in most locations. In the most desirable locations (due to the County's capital investments, which costs it is entitled to recover) the fees are higher. And as the County is interested in promoting deployment to underserved areas, its fees are well below average cost in locations where providers need additional incentives to provide service. The County is prepared to absorb certain costs, rather

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Small Cell Order* ¶¶55-56

<sup>76</sup> *See* Exhibit D.

than recover them, to incentivize provider deployment;<sup>77</sup> the Petition seeks more, however. The Petition demands that, regardless of costs and regardless of the County's investment, the FCC's presumptively reasonable fees are more akin to a rate card to which localities must conform. The Petition is in error.

***D. The County's Rights-of-Way Use Fees and Business License Tax do not violate, and in fact are the only viable option for the County to exercise its lawful authority without violating the Communications Act.***

The County assesses the Business License Tax as an exercise of its police powers, specifically the power granted to it by the State of Nevada to levy taxes against local businesses. Neither the Communications Act nor the Small Cell Order grant providers of telecommunications services blanket exemption from laws of general applicability - if it did, wireless carriers would have no need for construction permits in the first place, nor bear any obligation to pay minimum wages imposed by the several states. This is, obviously, not the case - permits are still required and employees must be paid minimum wages prescribed by states and, in some cases, localities. The Business License Tax at issue here is no different.

The Petition conveys an incomplete picture of the County's regulatory regime. The Business License Tax is assessed against wireless carriers like Petitioner, and (as specifically permitted by the Commission) is in turn passed through to Clark County residents as an additional amount on their phone bills. But other companies provide only wireless infrastructure, and offer no retail services to County residents. Thus, they are not subject to the Business License Tax. Therefore, to act in a nondiscriminatory manner (as required by the Commission and the Communications Act) with respect to providers of telecommunications and personal wireless services regardless of whether they have retail customers in the County, an equivalent

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<sup>77</sup> Exhibit H, Transcript of December 4, 2018 Clark County Board of County Commissioners Meeting, Agenda Item 63, at 9.

fee is assessed associated with occupation of the rights-of-way. And in order to avoid imposing double taxation on its citizens, the County waives this fee where a company pays the Business License Tax.

The Petition and the Commission's ill-considered Small Cell Order thus put the County in an impossible position. Either the County surrender its police powers by repealing the Business License Tax (thus treating wireless carriers more favorably than other companies, in violation of Federal law and in a manner not required by the Commission), or the County impose a similar fee regime on non-retail service providers, in order to avoid violating Federal law by discriminating between providers. As noted above, and as reflected in the Small Cell Order, there is no apparent authority for the Commission to prohibit localities from exercising their general taxation power. The Commission therefore cannot force the County to repeal its Business License Tax - it is outside the Commission's jurisdiction to address. And any action to preempt the ROW use fee, as the Petition requests, would force the County into violation of Federal law - an equally unjust and impermissible outcome. The Commission's only option is to recognize the inadequacies of its Small Cell Order and the limitations of its authority with respect to local police powers, and to recognize that the imposition of a gross revenues based right-of-way fee cannot possibly constitute an effective prohibition, as it is imposed for the purpose of avoiding a violation of the Act itself.

***E. The Petition offers no evidence to support its claim that the County's inspection fee constitutes an effective prohibition. The County must be permitted to manage its rights-of-way.***

The County's annual inspection fee, like its other fees, is directly reflective of its estimated costs in inspecting infrastructure in the public rights-of-way to ensure it is safely installed, maintained in good working order, compliant with all applicable codes and permit requirements, and does not pose a danger to the public or to other occupants of the rights-of-way.

These are core rights-of-way management functions, and fall squarely within the bounds of costs the County is entitled to recover. The Petition offers no evidence that the County's cost estimate is inaccurate – it merely asserts that, because a fee is charged, it must be an effective prohibition. The Petition is in error.

**V. CLARK COUNTY'S DOCUMENTED SMALL CELL COSTS DEMONSTRATE THAT THE COMMISSION'S PRESUMPTIVELY REASONABLE FEE LIMITS BEAR NO RELATIONSHIP TO OPERATIONAL REALITY AND CANNOT RATIONALLY FORM THE BASIS OF A *PRIMA FACIE* TEST FOR EFFECTIVE PROHIBITION.**

***A. The FCC's presumptively reasonable fee limits fall well below Clark County's documented costs directly related to management of the rights-of-way and wireless facilities therein, and investment in rights-of-way infrastructure.***

As described above, the County's rate structure directly reflects an estimation of its current and anticipated costs in both investing in rights-of-way infrastructure for use by wireless service providers, and in administering an efficient program compliant with the FCC's strict requirements. The core of the Petition's claim for preemption is that the resultant rates *must* be prohibitory, and cannot possibly reflect costs, as they are higher than the Commission's rate structure. But whether one number is bigger than another is not the test – it is whether the fees assessed reasonably approximate objectively reasonable costs.<sup>78</sup> As described herein and documented in the attached Exhibits, the County's program is thoroughly consistent with this directive. That Petitioner would rather the County bear the costs of infrastructure deployment is unsurprising – keeping costs down is good business. But the law does not entitle Petitioner to relief merely because it would be convenient – there must be some effective prohibition for Petitioner to find relief under Section 253(a), and none is identified. That in the real world, costs exceed \$270 per site per year, is immaterial.

The Commission's \$270 threshold merely establishes a level below which a locality need

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<sup>78</sup> Small Cell Order at ¶50.

not bother linking its fees to costs – they are *presumptively* reasonable.<sup>79</sup> But above that level, the calculation flips – it is incumbent on a complainant to demonstrate, in making a case for relief from effective prohibition under Section 253(a), that a locality’s fees *do not* represent costs. Petitioner made no such showing here, appearing instead to confuse a presumptively reasonable fee with a regulated rate limit. The Petitioner is in error

***B. Application of the Commission’s presumptively reasonable fee schedule would force the County to directly subsidize tens of millions of dollars in costs that should be borne by carriers and infrastructure providers like Petitioner.***

Application of the FCC’s rate structure to estimated deployment in the County illustrates the absurdity of the presumptively reasonable rates. In response to the Petition, the County’s consultants developed financial models attached hereto as Exhibits J & K, projecting the costs to the County if it continues implementing its capital investment and management program yet is limited to charging the Commission’s arbitrary fees. Assuming 500 small cells are installed in the County – a reasonable estimate given Petitioner claims it operates 99 such facilities in the County already – the County would be forced to shoulder more than \$11 million in unrecoverable expenses, the majority of which are capital costs associated with an ongoing project designed to simplify deployment for providers.<sup>80</sup> Within twenty years, the total cost to the County would exceed \$40 million, as annual programmatic costs would significantly exceed the \$3.4 million in fees paid over that same period under the Commission’s rate structure.<sup>81</sup> While this outcome is of course appealing to Petitioner, it is fundamentally inconsistent with the Commission’s assertion that localities are entitled to recovery of their costs associated with rights-of-way management and capital investments. In contrast, the County’s rate structure,

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<sup>79</sup> Small Cell Order at ¶¶79-80.

<sup>80</sup> See Exhibit J, Projection of Long-Term Revenues and Costs Under FCC and County Fee Levels, Assuming Deployment of 500 Small Cells, at 1.

<sup>81</sup> *Id.*

designed to allow recovery of costs, still sees the County in deficit for most of the next 20 years, as it gradually recovers the capital costs it incurred in facilitating next-generation wireless deployment, but the losses are nowhere near as egregious.<sup>82</sup> The County will be only \$7.3 million in the red after 20 years under its rate structure – a level of investment that the County is willing to shoulder in order to incentivize deployment and meet resident and visitor demands, while preserving the aesthetics of the community.

Were the County to impose the FCC suggested rate of \$270 dollars per year and there be on 1,000 small cells deployed – a projection that some feel to be a more realistic estimate –the residents of Clark County would be forced to bear approximately \$55 million in unrecovered costs over the next 20 years.<sup>83</sup> Under its own rate structure, in contrast, the County will be able to recover its significant capital investments and cover its programmatic costs in approximately twenty years.<sup>84</sup>

The County's approach is, by any standard, reasonable. It is investing in its broadband future and working to streamline deployment for providers, but these initiatives have costs, and the Commission has made clear providers may be required to shoulder those costs. The County's rate schedule, ordinance, and program framework have been adopted in direct furtherance of these goals, and should not be disturbed by Commission intrusion.

***C. The Commission's presumptively reasonable fee schedule is not based on any cost study or economic analysis, or any examination of actual costs, and cannot rationally be used to measure the reasonability of costs. The County is owed deference in its estimations.***

That the Commission's fee structure is not consistent with real-world costs is unsurprising – the Commission made no effort to familiarize itself with actual costs, or to draw

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<sup>82</sup> *Id.* at 2.

<sup>83</sup> Exhibit K, Projection of Long-Term Revenues and Costs Under FCC and County Fee Levels, Assuming Deployment of 1000 Small Cells, at 1.

<sup>84</sup> *Id.* at 2.

upon cost information in adopting its fee structures. The Small Cell Order specifies that the presumptively reasonable rates are drawn from a sample of state small cell legislation, but the Small Cell Order simply presumes, without analysis, that those rates in state bills were based on cost estimates and thus reflect a reasonable safe harbor indicative of actual cost levels.<sup>85</sup> Neither the Small Cell Order, nor Petitioner in this proceeding, offers any evidence to suggest this is the case. In several cases, the state laws cited by the Commission make little to no mention of costs in setting annual fee amounts, yet Petitioner now argues these arbitrary values are the yardstick to be used in measuring the reasonability of costs. This cannot be the case – neither the Petitioner nor the Commission has ever identified any evidentiary basis to conclude that \$270 actually represents an approximation of real-world costs; it is simply an arbitrarily selected safe harbor amount.

***D. Clark County’s costs are documented, and the County is entitled to deference in its determinations.***

The Commission’s standard for evaluating costs specifies that fees must be a “reasonable approximately” of “objectively reasonable costs.”<sup>86</sup> This two-layered reasonability standard is only practicable if deference is given to governments like the County in determining both how to reasonably approximate their costs, and which costs are reasonable to include. In the instant matter, the County will incur significant costs and has already invested significant time and resources in establishing the basis for its cost-based pricing framework.

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<sup>85</sup> Small Cell Order at ¶79, n.233 (“These presumptive fee limits are based on a number of different sources of data. Many different state small cell bills, in particular, adopt similar fee limits despite their diversity of population densities and costs of living, and we expect that these presumptive fee limits will allow for recovery in excess of costs in many cases.”) The Commission identifies its own pole attachment regulations and state small cell legislation as examples of the “number of different sources” upon which it relied, and none of these sources are themselves based on cost studies to identify actual real-world cost levels associated with management of the rights-of-way for wireless providers.

<sup>86</sup> *Id.* at ¶50.



The Small Cell Order offers no guidance as to precise methodologies for evaluating costs.<sup>87</sup> Clark County is thus owed deference in its determinations by the Commission, so long as they are not plainly unreasonable.<sup>88</sup> The measure of that must not be whether the numbers in the County's equation are larger than the Commission's arbitrary threshold, but instead a high-level look at whether the County's actions are unreasonable. In this case, the Commission will find no unreasonable behavior.

The County worked proactively to develop a county-wide program, estimate its current and future costs, account for inflation in those costs, avoid discriminatory treatment among different types of providers, and implement a rate structure which sees the County not only recovering its costs, but in certain situations shouldering additional financial burden in the interests of promoting deployment. No part of this is unreasonable, nor does Petitioner offer any evidence that any part of the County's actions are unreasonable under any particular legal standard.

## **VI. CONCLUSION**

For the foregoing reasons, the County strongly opposes the Petition. It is without merit, as described above, and the issues outstanding between the County and Petitioner are far more likely to reach productive resolution through negotiation than through a continuation of the Commission's multi-year campaign against local governments. Moreover, the County has met its burden to demonstrate that the ordinance is a protected form of rights-of-way management preserved by Congress for the County. And finally, Petitioner has been providing and continues to provide both telecommunications and personal wireless services within the County. It should

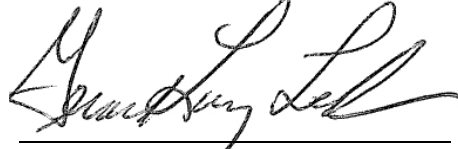
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<sup>87</sup> *Id.* at ¶76 (“Because we interpret fair and reasonable compensation as a reasonable approximation of costs, we do not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW.”)

<sup>88</sup> *See* Section IV.B, *supra*.

be impossible to claim prohibition where service is being provided. Therefore, no action is warranted by this Petition, and the Commission should promptly deny the Petition and terminate the above-captioned proceeding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gerard Lavery Lederer", written over a horizontal line.

Gerard Lavery Lederer

John Gasparini

Mark DeSantis

BEST BEST & KRIEGER LLP

2000 Pennsylvania Avenue N.W., Suite 5300

Washington, D.C. 20006

*Counsel for Clark County, Nevada*

September 25, 2019

## **EXHIBIT A**

## **DECLARATION OF JACQUELINE HOLLOWAY**

1. I serve as Director of the Department of Business License at Clark County, Nevada (the “County”). In this capacity, I am responsible for the issuance and regulation of wireless communications permits and the negotiation and regulation of public right-of-way agreements. I affirm that the following is a true and accurate representation of the events and circumstances leading to Clark County’s decision to implement its small cell siting program and adopt its wireless ordinance, Chapter 5.02 of the Clark County Code.

2. Between October and December 2016, the Chairman of the Clark County Board held two meetings with members of the wireless industry regarding the status of wireless communications facilities within the County.

3. In response to the those meetings in 2016, the Board of County Commissioners (the “Board”) received a report on January 17, 2017 in regards to wireless communications facilities within the County. As part of that report, the County was directed to engage an independent consultant to assist the County in developing strategies to best manage the current wireless broadband environment.

4. On May 16, 2017, the Board approved a contract with the consultants Connected Nation Exchange (now known as Smart Works Partners) for the purpose of implementing a small cell siting program. The County’s intent in implementing a small cell siting program was to identify the current and future impact of small wireless facilities in the County rights-of-way, to develop a plan for efficient and deployment-friendly utilization of the rights-of-way, and to implement a framework through an ordinance, license agreement, and fee schedule, all designed to ensure the County was well-positioned to facilitate deployment of next-generation wireless

technologies while protecting its rights and responsibilities with respect to County property and the aesthetics of County rights-of-way.

5. The County intended the program to assist in meeting the anticipated needs of wireless carriers, which includes significant County investment in conduit and wireless-ready poles in areas where high numbers of small cell sites were anticipated to be requested.

6. In implementing the small cell siting program, it was the County's objective that carriers be able to serve their customers in the County, and that the County's costs in developing, implementing, and administering such a program would be recouped by means of recurring costs collected on an annual basis. The ordinance ultimately adopted directly reflects this intent.

7. Beginning in May of 2017, the County worked alongside Smart Works Partners to develop a wireless ordinance that would take into account the current state of the wireless industry.

8. The Board was briefed on the status of the wireless ordinance from August 2018 through September 2018. On September 11, 2018, the proposed wireless ordinance was posted on the County's website, and industry members were notified via e-mail of a public meeting regarding the proposed ordinance. The public meeting was then held on September 20, 2018, at which time the ordinance was explained to the public and industry members were invited to comment on the proposed ordinance.

9. On October 4, 2018, a Business Impact Notification and a revised draft of the wireless ordinance were posted on the County's website and emailed to industry members, along with a November 2, 2018 deadline for comments on the same.

10. On October 15, 2018, two separate public meetings were held by the County, one with third party providers, and one with carriers only. In both public meetings, industry members



provided general comments on the proposed ordinance regarding pricing, the FCC's rules, and stealth concerns. The following day, October 16, 2018, the County held another public meeting to specifically address engineering concerns related to the proposed ordinance. Industry members provided general comments regarding the FCC's rules and stealth concerns.

11. On November 2, 2018, the deadline for commenting on the Business Impact Statement, three industry responses were received by the County. These responses predominantly suggested changes based on the FCC Small Cell Order.

12. On November 20, 2018, the County delayed inclusion of the proposed wireless ordinance on the County Commission Agenda so that adequate consideration could be given to the industry responses. Several of the changes requested by the industry were then made.

13. On December 3, 2018, industry members submitted a joint memorandum requesting that consideration of the wireless ordinance be delayed until after January 14, 2019, stating that the FCC Small Cell Order would likely be stayed, and stating that additional time was needed to meet with each County Commissioner.

14. The following day, December 4, 2018, the County approved the Business Impact Statement and introduced the wireless ordinance for adoption. On December 18, 2018, the County conducted a public hearing to adopt and approve, and authorize the County Chairman to sign, the proposed wireless ordinance. However, the County at that time moved to continue the public hearing until January 7, 2019, at which time the County Board could take action if it so chose. The purpose of this motion was so that an additional industry meeting could take place regarding the proposed ordinance to resolve issues still outstanding, such as technological concerns voiced by industry members. This final meeting took place on December 26, 2018 and was attended by over thirty participants. Numerous changes to the final ordinance were adopted

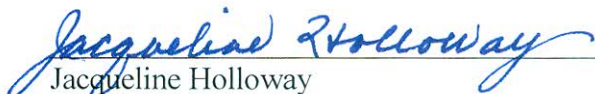
as a result of this and other meetings with industry representatives. The wireless ordinance was subsequently adopted via public hearing on January 7, 2019.

15. In implementing the small cell siting program, the County decided to include an inspection program for wireless facilities in the public rights-of-way. The need for this compliance methodology was an outgrowth of an audit performed by the County on 150 small cell sites, in which it was determined that 90% of the sites were out of compliance with their associated Master License Agreements, and 50% were out of compliance with their associated County permits. The County set the inspection fee based on its estimated costs in conducting an inspection program. The inspection fee was intended to be a compliance methodology by which the County could compare wireless facilities as constructed against what each encroachment permit allowed.

16. During the pendency of these proceedings and negotiations between the County and Verizon, the County and Verizon continue to operate under the Master License Agreement which predates the adoption of this ordinance and which remains in effect. Under this Master License Agreement, Verizon has deployed at least 26 small wireless facilities in Clark County rights-of-way.

17. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

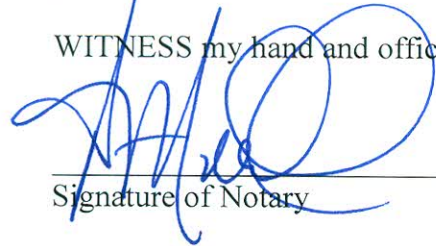
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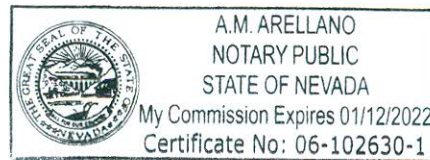
  
Jacqueline Holloway  
Director, Department of Business License

State of Nevada  
County of Clark

On September 25, 2019 before me, Angie M Arellano  
Appeared Jacqueline Holloway Personally known to me (or proved to me on  
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) and/or  
initial(s) on the instrument the person(s), or the entirety upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary





## **EXHIBIT B**

VERBATIM TRANSCRIPT OF A PORTION OF THE REGULAR BOARD OF COUNTY COMMISSIONERS MEETING HELD DECEMBER 19, 2017 REGARDING ITEM NO. 74 (THAT THE BOARD OF COUNTY COMMISSIONERS RECEIVE A REPORT FROM CONNECTED NETWORK EXCHANGE (CNX) REGARDING THE DEVELOPMENT OF A BROADBAND WIRELESS PLAN FOR UNINCORPORATED CLARK COUNTY)

4:33:23

YOLANDA T. KING

We can go back to Item seventy-four which is to receive a report from Connect - Connected Network Exchange - Exchange CNX regarding the development of a Broadband Wireless Plan for unincorporated Clark County.

JACQUELINE HOLLOWAY

Good afternoon Mister Chairman, Jacqueline

STEVE SISOLAK

I hope this thing goes smoother than the last one.

HOLLOWAY

Jacqueline Holloway, Director of Business License, here with me is Mister Anthony Perez, Project Man - Manager for CNX. We do have a brief presentation, and we will be brief Mister Chairman. We'll go ahead and get started now. Anthony.

ANTHONY PEREZ

Mister Chairman, members of the Commission, thank you for the opportunity to complete this project and to present our recommendations to you today. I'd also like to thank Miss Jacqueline Holloway and Mister Mike Harwell from Business Licensing, they've been instrumental in completion of this project. I would also like to thank the County Manager's office and the Directors and staff of Public Works; Comprehensive Planning and Information Technology have also been very helpful. Before we get to our recommendations, I would just like to mention four quick items. The first is that the demand for wireless data is exploding. Applications such as video streaming, video conferencing, and data intensive applications are really stretching the capacity of the existing wireless networks. Item number two is that small cells are the solution that wireless network providers are using to solve this capacity problem. Item number three is that the County infrastructure and the right-of-way is the good solution and for the deployment of small cells, because it's an existing

PEREZ  
(CONTINUED)

infrastructure and a grid that wireless providers can use. As opposed to a patchwork of private land owners who may not be interested, may have different design guidelines, and rent demands. And fourth, is that it is important for the County to act now and stay ahead of the development. The wave of small cell applications is going to continue to increase, and this will allow the County to protect its infrastructure and public interest. At the same time the County has the opportunity to generate additional revenue which could be used to reduce the digital divide and fund smart community initiatives. That brings us to our recommendations. The first four recommendations are programmatic recommendations. Number one, perhaps the most important, is that the County adopt a comprehensive broadband management program. This program would be the subject matter expert for all things broadband for the County. And they would implement any of the recommendations and oversee the day-to-day broadband operations. Item number two is to align the accountabilities with functional expertise. This is just to make sure that all the tasks and the workflow are assigned to County departments that are best equipped for that task. Item number three, recommendation number three, is to identify, aggregate, and make all assets available in the County. Now this would include assets inside the right-of-way, and outside of the right-of-ways, such as County buildings, access land, parks, that wireless providers may want to install wireless installations. Recommendation number four is to create a streamlined and efficient online workflow, this could be done using Business Licensing's existing software. In addition, it could also be implemented to add an online search function for property and add applications, licensing, and permitting functions online. Recommendation number five is to capture the fair market value for County assets. On the left side of the graph is the existing - or current - business licensing fees, and on the right side of the graph contains a recommended - recommended licensing for fee attachments. And this is a - a three tiered approach. The first would be the resort district, and then for areas outside of the

PEREZ  
(CONTINUED)

resort district, there'd be a standard market rate, and then finally there would be a rate for rural and broadband underserved areas in an effort to incentivize wireless providers to provide services to those areas. The next slide shows what would happen if the recommendation to increase the fees is adopted. The item on the left shows the resort corridor and if just one thousand - one hundred small cells over a five year period were calculated using - or charged - using the additional rate it would generate almost two million dollars. On the right hand side if you had two hundred sites in the non-resort corridor, over a five year period, it could generate almost two point five million dollars. Recommendation number six is to revise the licensing fee structure and that would just include a license application for - fee for each site an applicant applied for, and also to charge fees for licensee structures that are constructed in the right-of-way. Item number seven is to create a uniform master license agreement and this would be just a uniform agreement that would be the same for all licensees to be fair and neutral. Item number eight is to use site license agreements. This would make a site specific agreement that would include things like the location, the entitlements, and items like the height, and the specific equipment that are going to be installed on that site. That would memorialize the site specific entitlements and make pole to pole management easier. Recommendation number nine is to implement an annual insp - inspection program. And this would be just where a portion of the licensee's installations would be inspected for contract and safety compliance. Item number ten is to implement code changes to harmonize and clarify the small cell development process. Recommendation number eleven - eleven is to adopt design guidelines. These design guidelines would include things like co-location requirements and concealment requirements. In addition they would also include an expedited review for standard designs that are pre-approved, a variance procedure for non-standard designs, a reduction of the current nine-hundred foot separation requirement to a three-hundred foot radius separation requirement between licensee poles, which would result in a six-

PEREZ  
(CONTINUED)

hundred to six-hundred - a six-hundred foot separation between licensee poles. Finally it would also require the use of existing right-of-way structure. Recommendation number twelve is to allow wireless attachments on traffic light poles, this is to minimize the - the need for additional structures, particularly in the resort corridors. Recommendation number thirteen is to adopt a comprehensive County fiber initiative. Most importantly it would be for the County to identify inventory and map all of their existing fiber and conduit, and to make a five year plan for the future development of that fiber. Recommendation number fourteen is to expand the Clark connect platform to allow citizens to report inadequate broadband in their area. Recommendation number fifteen is to establish an inter-county departmental broadband committee. And essentially that would be just all of the - the - the County departments would appoint one point of contact just to ensure that every department was - their needs are met and that - and that their - their - their - that their needs are met and that - that they're all on the same page as far as policy development. Finally, item - item sixteen is to use - the - the increased revenue to promote services to broadband underserved areas and fund smart city - smart county community initiatives.

HOLLOWAY

Mister Chairman that concludes our presentation.

SISOLAK

Thank you. Okay, do we have any questions, anybody has?

CHRIS GIUNCHIGLIANI

I just think this is going - this is exciting to me actually, I don't know much about this technology but I thought the - that when we all were briefed, excellent program. I just hope at some point we can have a messaging go out to our sister cities to see if wherever possible we can co-locate and - and communicate together and not have different broadbands or widths out there so that we're saving money; but it's also more regionalized, I think, in the long run. So I'm hoping Jacqueline that maybe those conversations can occur with some of our other jurisdictions.

HOLLOWAY

Absolutely.

GIUNCHIGLIANI

Thank you Mister Chair.

SISOLAK

Thank you. Go back to the one slide briefly, the one where we talked about in my briefing, with the different prices where if you bought the prices where it showed the expensive one, and I suggested that you - yeah that one there. If we increase the licenses the price - you took the higher price in the resort district and gave them a free one in the underserved areas we'd be able to get access into the underserved areas and they'd have an incentive to do that since it would be free. So - I thought we could do that.

PEREZ

Mister Chairman, we - we did discuss that possibility. One thing that we thought might happen and - and we could maybe get some industry feedback is that if you gave them the free one they may just decide that - that they didn't want to build in that area so even though they have it -

SISOLAK

Then they're not going to build on the strip

PEREZ

Okay. So -

SISOLAK

So - so you've got to get the good with the bad. If we want to get it into the underserved areas, they'd have to put one in the underserved area to get one on the strip. I mean that's the way to kind of nudge them along a little bit. You know.

GIUNCHIGLIANI

Could we also then make sure that they actually have the fiber to do it in the underserved areas? 'Cause that's what we're running into in our districts, we don't even have the fiber so they could say yeah, I wanna do it and then you can't put it into play cause that doesn't exist. So I would hope that you would look at that part of it too.

PEREZ

Right, and one of the things that we do recommend is to - to map all of the existing fiber that the County owns, and that way that would solve - that - that issue.

SISOLAK

Okay. Thank you very much for your presentation. Next item. Mister Cederburg come on down.

KING

Next item is seventy-seven which is to receive an update on the proposed elevated expressway and take any action deemed appropriate.

End

/km

4:44:40

## **EXHIBIT C**



**ANALYSIS OF COMMENTS AND SUBSEQUENT MODIFICATIONS  
OF THE PROPOSED WIRELESS COMMUNICATIONS ORDINANCE**

New changes are in **BOLD GREEN**.

	<b>Proposed Ordinance</b>	<b>Industry Comments / Public Works Comments</b>	<b>Ordinance Modification</b>
1	n/a	n/a	Effective on July 1, 2019 for Licensees with a Master Wireless License Agreement
2	Remediation of existing Facilities to comply with new ordinance by December 31, 2019.	The time to remediate is not long enough. It should be based on the natural replacement of Equipment.	Remediation dates extended to as late as December 31, 2023 for Las Vegas Boulevard District; to December 31, 2021 for the Central Communication District; and as Equipment is upgraded or replaced for all other Districts.
3	Multicarrier poles must accommodate two Licensees with a shared antenna.	5G cannot work with shared antennas.	The shared antenna is only required if technologically feasible and commercially available.
4	Requirement that a Licensee must use an available Municipal Facility if it is within a 700-foot radius of its intended location.	The 700-foot and the 600-foot requirement for distance between Facilities is confusing and needs to be the same distance.	Changed the 700-foot distance to 600 feet.
5	Requires poles within the Las Vegas Boulevard District be able to accommodate more than one Licensee.	How are costs allocated between Licensees?	Provisions for the allocation of costs have been added to allow the first Licensee on a pole to recover some of its costs in replacing the pole or making the pole capable of accommodating a second Licensee.
6	The separation between the Facilities of a provider or a Licensee is 600 feet.	The distance needs to be less or no limit at all.	Reduced the distance that a provider or Licensee may have another Facility to 300 feet.
7	The size limitation of antennas is based on specific dimension.	The final designs and sizes of the new 5G antennas are not known yet.	Changed the size limitation to a volume measurement not to exceed 6 cubic feet.
8	The size limitation of Equipment is based on specific dimension.	The final designs and sizes of the new 5G equipment are not known yet.	Changed the size limitation to a volume measurement not to exceed 24 cubic feet.
9	The Wireless Site License Fees have been established at \$3960/year, \$2500/year and \$700/year depending upon the Design District.	The Wireless Site License Fees are too high.	The site license fees have been reduced for the Residential, Commercial and Manufacturing Districts from \$2500/year to \$1900/year.
10	The initial site license fee begins 180 days after the SLA is signed or when the installation of the Facilities begins whichever is sooner.	n/a	Changed to 180 days after the SLA is filed by the Licensee and accepted by the County.
11	The annual fee adjustment for the site license fees is 3% per year.	n/a	Changed to 2% per year.
12	The effective date of the annual increase in the site license fees is July 1, 2019.	n/a	Changed to July 1, 2020.
13	<b>If an available Municipal Facility is within 600 feet of a location desired by a Licensee, the licensee must locate on that Municipal Facility.</b>	<b>The distance needs to be less; should be the same as the distance restrictions for Licensees and Wireless Service Providers of 300 feet.</b>	<b>Changed the distance from 600 feet to 300 feet.</b>
14	<b>The distance measurements of 300 feet and 600 feet are measured by radius.</b>	<b>The distance measurements should be measured linearly.</b>	<b>Changed distance measurements from radius to linear feet.</b>
15	<b>The Multicarrier Pole are to be designed to accommodate two licensees.</b>	<b>These poles should be able to accommodate more than two Licensees if possible.</b>	<b>Changed the Multicarrier Pole to be able to accommodate more than one Licensee.</b>
16	<b>The Multicarrier Pole is allowed to be used in certain ROW Design Districts.</b>	<b>Collocation should be allowed in every ROW Design District.</b>	<b>Changed the Multicarrier Pole to be allowed in all ROW Design Districts.</b>
17	<b>The term Site License Agreement is used throughout the proposed ordinance.</b>	<b>The Licensees should not have to enter into an Agreement for each Wireless Communications Site.</b>	<b>"Site License Agreement" was changed to "Site License Approval."</b>
18	n/a	<i>What happens when there is a public demand on County-owned power source that would exceed the capacity of the service?</i>	Licensee shall relocate or find alternate source of power.
19	Prior to a Licensee accessing its equipment in the rights-of-way for non-emergency purposes the Licensee must notify Public Works.	<i>In addition to notifying Public Works the Licensee should be required to file a Traffic Control Plan.</i>	A Traffic Control Plan must be obtained.
20	An application fee is established for a Wireless Site License Application.	<i>The Site License Application Fee should be payable to the Department of Public Works.</i>	The Wireless Site License Application Fee shall be paid to the Department of Public Works.

**ANALYSIS OF COMMENTS AND SUGGESTED MODIFICATIONS  
NOT MADE TO THE PROPOSED WIRELESS COMMUNICATIONS ORDINANCE**

	<b>Proposed Ordinance</b>	<b>Industry Comments</b>	<b>Reason for No Change</b>
1	The definition of "Municipal Facilities" excludes-traffic signal poles and school zone flashers.	The definition should include traffic signal poles and signage poles.	For public safety reasons traffic signal poles are not included in the definition of "Municipal Facilities."
2	The definition of "Wireless Service Provider" is defined as a Person who provides Personal Wireless Services as defined in 47 U.S.C. § 332 (c)(7)(C)(i).	The definition should also include a person that builds, installs, and/or maintains Wireless Communications Facilities on behalf of a Person who provides Personal Wireless Services.	A person that only builds, installs, and/or maintains Wireless Communications Facilities for another person does not provide any Personal Wireless Services.
3	In the case of an emergency and it becomes necessary for the County to remove any of the Licensee's equipment, no charge shall be made by the Licensee to the County for any loss, damage, restoration or repair.	There should be no charge by the Licensee only when the emergency involves the immediate threat or harm to persons or property.	Emergency situations could occur that do not involve an immediate threat or harm to persons or property, but immediate action is required of the County, such as clearing a roadway that is blocked by a downed pole.
4	A Use Fee of 5% of Gross Revenue and Wireless Site License Fees ranging from \$700 per pole per year to \$3,960 per pole per year are assessed based on the District in which the Wireless Communication Facility is located.	The Use Fee should be eliminated and the Wireless Site License Fee should be reduced in all Districts to \$270 per pole per year.	The County will be incurring additional expenses in implementing a wireless communications policy concerning the management of the County's Rights-of-Way that will include permitting, enforcement, and maintenance of the Rights-of-Way.

## **EXHIBIT D**

**Cost Data Presented to the BCC on December 18, 2018**

The cost per pole per year analysis is as follows:

<b>Total Hours Per Site-Start Up</b>	
Program Management (overview)	1
Point of Contact Services (online)	1
Asset Platform - (online)	1
Platform Services (online)	2
Application Services (in-market)	5
Permit Services (online)	2
Leasing Services (online and/or in-market)	3
Pre-Construction Services (in-market)	4
Construction Services (in-market)	3
Const. & Post Construction Services (online)	1
Annual Inspection Services (in-market)	1
<b>Total</b>	<b>24</b>

<b>Expense by Year (Five Years)</b>					
	Year 1	Year 2	Year 3	Year 4	Year 5
Hours Per Site	24	12	6	6	6
Inclusive Cost per Hour	\$250	\$250	\$250	\$250	\$250
Total Per Site	\$6,000	\$3,000	\$1,500	\$1,500	\$1,500
<b>5 Year Annual Average</b>	<b>\$2,700</b>				

Assumes hours decrease after initial install and launch activities.

The average revenue per pole calculation is as follows:

<b>Annual Average Revenue Per Site</b>	
Strip and Communication District	\$3,960
Others	\$1,900
<b>Average</b>	<b>\$2,930</b>

Assumes half of the sites are in Strip and Communication District and other half is installed in the typical Community Districts

Cost Data Presented to the BCC on December 18, 2018

Example Cost of Pole Installation for Clark County

TOTAL INSTALL		SITE MATERIALS AND FOUNDATION		TOTAL TURNKEY INSTALLATION
SERVICES	PRICE	SITE MATERIALS	PRICE	TOTAL TURNKEY PRICE
Site Walks, Data Collection	\$ 1,176	Pole 8"x37', Milbank 200A meterbase, SquareD disconnect	\$4,950 * Note 1	\$24,834
Leasing, NEPA	\$ 2,321	Cage, 2xRRU	\$ 2,665	
Zoning, Permits	\$ 1,792	Antenna Mount, Skirt	\$ 712	
RF Support	\$ 478	SmartPier™	\$ 1,800	
Design Coordination	\$ 441	Luminary, arm+fixture	\$ 350	
A&E Con+Zoning, stamped	\$ 1,929	<b>TOTAL</b>	<b>\$ 10,477</b>	
Power and Transport Coordination	\$ 1,222	<i>*Note 1: Changing height varies pole cost several hundred dollars either way. Volumes of 50 and above drop pole cost.</i>		
Traffic Plans	\$ 523			
Installation	\$ 3,556	<div> <u>Conduit Estimate</u> <ul style="list-style-type: none"> <li>• Approximately 175 laterals of Two Conduits</li> <li>• \$10,000 per Lateral (\$100/ft at 50 ft)</li> <li>• TOTAL is \$1,700,000</li> </ul> </div>		
Testing, OTDR, Sweep, E911	\$ 919			
<b>TOTAL</b>	<b>\$ 14,357</b>			

## **EXHIBIT E**

# CLARK COUNTY BOARD OF COMMISSIONERS

## AGENDA ITEM

**Petitioner:** Jacqueline R. Holloway, Director of Business License

**Recommendation:**

**That the Board of County Commissioners continue the public hearing opened on December 18, 2018; adopt, approve and authorize the Chairman to sign an ordinance to amend Clark County Code Title 5, Chapter 5.02 concerning rights-of-way management for wireless communications facilities, providing for application and issuance of master wireless use and site license agreements, setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public rights-of-way; establishing fees for wireless communications facilities in the public rights-of-way; provide for other matters properly relating thereto. Commission District: All (For possible action)**

**FISCAL IMPACT:**

Fund #:	1010.000	Fund Name:	General Fund
Fund Center:	1110810010	Funded PGM/Grant:	N/A
Amount:	Unknown		
Description:	N/A		
Additional Comments:	This ordinance establishes fees for installation of wireless communications facilities in the County rights-of-way by wireless communications companies that are charged per pole within certain defined districts that range from \$700 per pole per year to \$3,960 per pole per year. The increased fees are anticipated to offset the County's program management costs to monitor, maintain and enforce the deployment of wireless communications facilities within the rights-of-way.		

**BACKGROUND:**

On December 19, 2017, The Board received a report and recommendations from Connected Nation Exchange (CNX) (now known as Smart Works Partners) on wireless communications facilities within the County rights-of-way. The recommendations included adopting design standards, implementing changes to the County Code and revising the license fee structure.

County staff has been working with CNX on developing a broadband wireless plan for the County and have been working with the wireless industry on preparing an ordinance to manage wireless communications facilities in the County rights-of-way.

The proposed ordinance was introduced at the December 4, 2018 of County Commissioners meeting and a public hearing was held on December 18, 2018 at 10:00 a.m, which was held until the January 7, 2019, Board of County Commissioners meeting.

Cleared for Agenda

**1/7/2019**

Agenda Item #

**43**

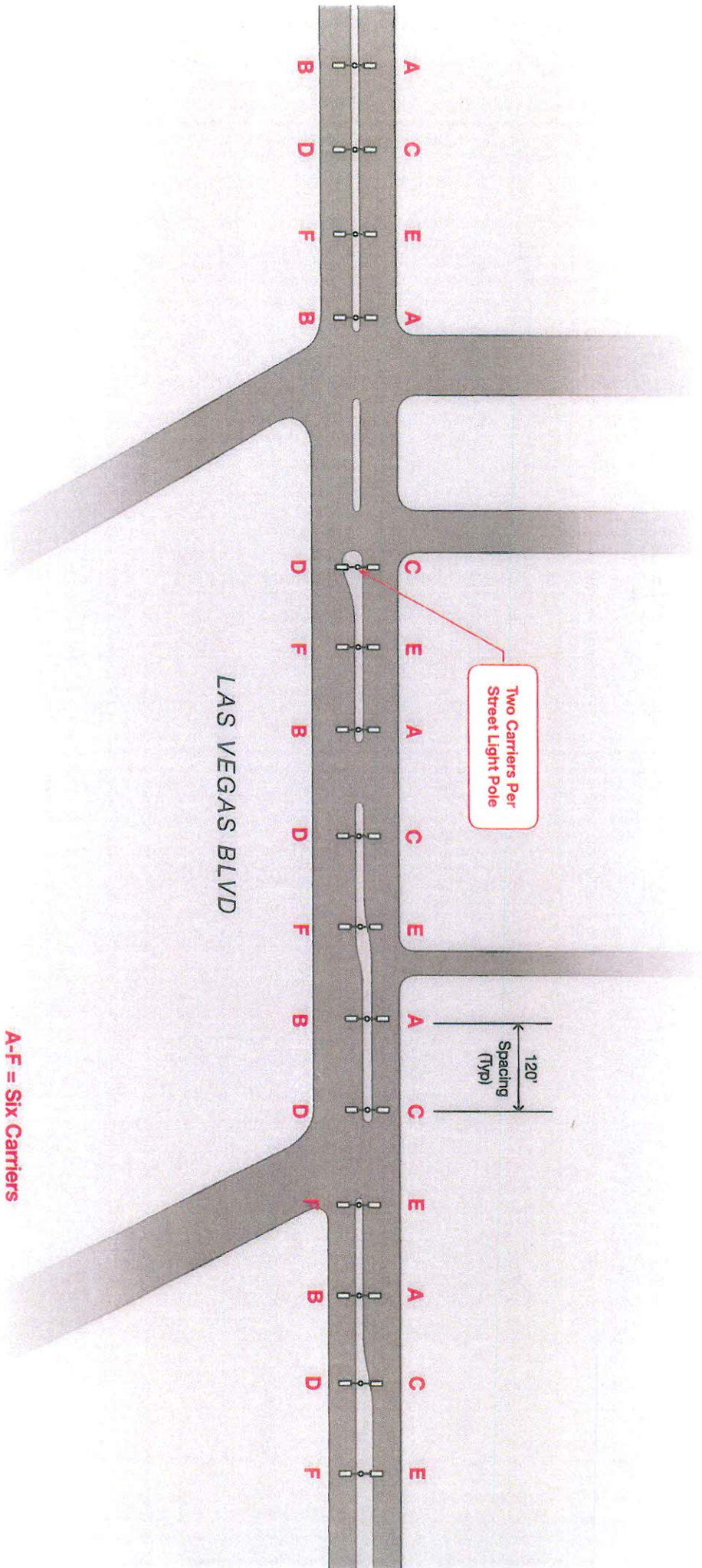
Respectfully Submitted,

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JACQUELINE R. HOLLOWAY  
Director



## **EXHIBIT F**



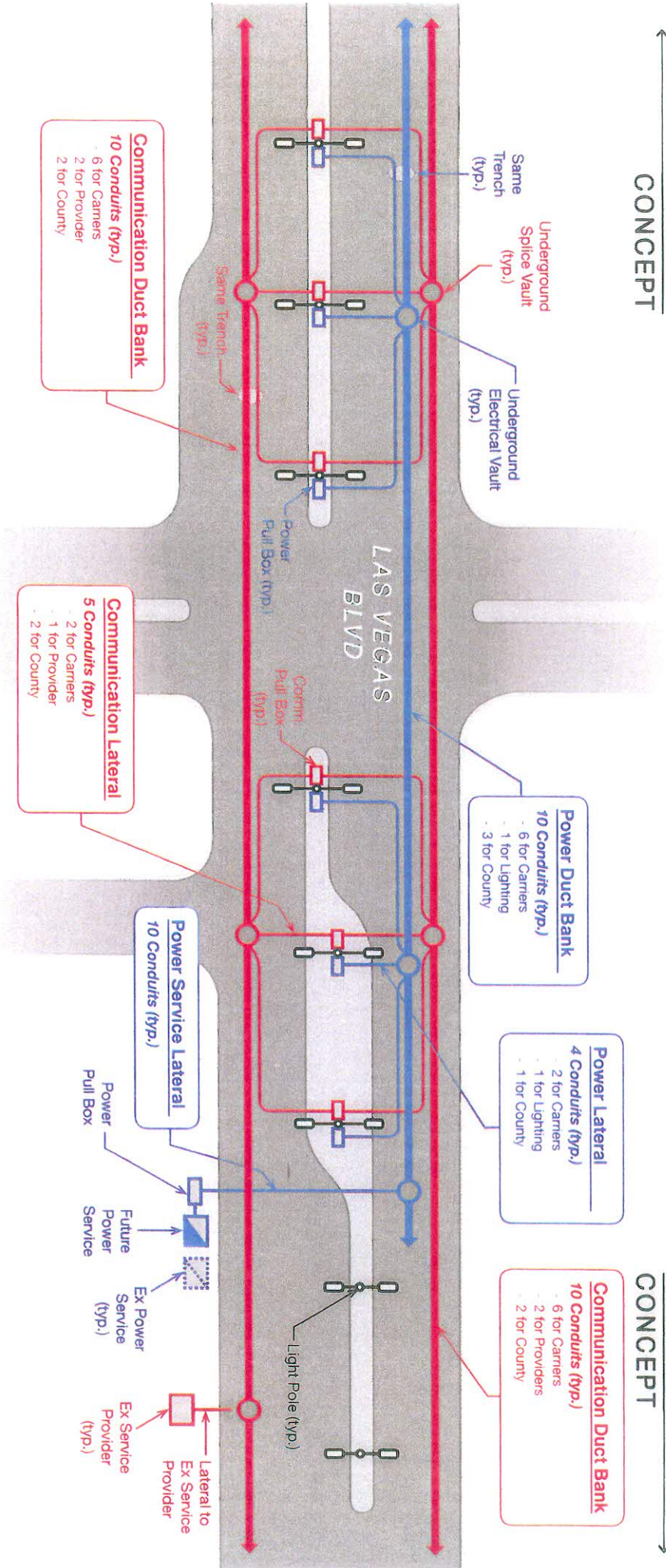
# Las Vegas Boulevard

## Typical Carrier Allocation (Sahara Ave. to Russell Rd.)

December 26, 2018

REPEAT  
CONCEPT

REPEAT  
CONCEPT



# Las Vegas Boulevard

## Communication and Power Schematic

December 26, 2018

## **EXHIBIT G**



VERBATIM TRANSCRIPT OF A PORTION OF THE REGULAR BOARD OF COUNTY COMMISSIONERS MEETING HELD DECEMBER 18, 2018 REGARDING ITEM NO. 61 (THAT THE BOARD OF COUNTY COMMISSIONERS CONDUCT A PUBLIC HEARING; ADOPT APPROVE AND AUTHORIZE THE CHAIRMAN TO SIGN AN ORDINANCE TO AMEND CLARK COUNTY CODE TITLE 5, CHAPTER 5.02 CONCERNING RIGHTS-OF-WAY MANAGEMENT FOR WIRELESS COMMUNICATIONS FACILITIES, PROVIDING FOR APPLICATION AND ISSUANCE OF MASTER WIRELESS USE AND SITE LICENSE AGREEMENTS, SETTING STANDARDS FOR DESIGN, INSTALLATION, OPERATION, MAINTENANCE AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY; ESTABLISHING FEES FOR WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDE FOR OTHER MATTERS PROPERLY RELATING THERETO) (FOR POSSIBLE ACTION):

01:37:26

YOLANDA KING

Alright, Item sixty-one is to conduct a public hearing, and adopt and approve, and authorize the Chairman to sign an ordinance to amend the Clark County Code Title five, Chapter five point zero two concerning right-of-way management for wireless communication facilities, providing for application and issuance of master wireless use and site license agreements, setting standards for design, installation, operation, maintenance and removal of wireless communications facilities in the public right-of-way; establishing fees for wireless communications facilities in the public right-of-way; provide for other matters properly relating thereto.

STEVE SISOLAK

Ms. Holloway, good morning.

JACQUELINE HOLLOWAY

Good morning. Good morning Commissioners. Jacqueline Holloway, Director of Business License, and I have with me this morning Jonathan Montfort, he is Vice-President of operations with Smart Works. We do have a presentation this morning Mister. Chairman if I may.

SISOLAK

Please.

HOLLOWAY

Thank you. First of all, I'd like to say that this has been a collaborative effort over the last two years between the County Manager's Office, Business License, Public Works, Comprehensive Planning, the IT Department, and of course our consultants Smart Works. I'd like to start off by summarizing the purpose of what we're trying to accomplish with this ordinance.

HOLLOWAY (continued)

The purpose of this new chapter, and this is a new chapter is to establish a local policy concerning rights-of-way management for wireless communications facilities; to permit and manage reasonable access in an equitable manner to rights-of-way in unincorporated Clark County for wireless communication facilities; to manage the physical capacity of the public rights-of-way held in the public trust by the County; to establish design standards; to provide for a consistent appearance of wireless communications facilities in the County rights-of-ways within defined districts and especially on the Las Vegas Strip; it's also to recover public costs of permitting industry use of the County rights-of-ways, and it ensures that all providers of wireless communication facilities within the County comply with all ordinances, rules, and regulations. I would also like to walk us back in terms of where we've been, Smart Works along with all of the staff that I mentioned - we worked to basically develop and build this ordinance. This was not an ordinance that we copied and pasted from another city or county, you know although we studied other cities and counties, but we developed a ordinance that we felt would be customized for the uniquenesses in unincorporated Clark County which certainly includes the Las Vegas Strip. So, I just kinda want to walk back on where we've been with the industry. It did take us six or seven months to work toward developing, and writing, and drafting, and receiving legal reviews of the ordinance. September eleventh we posted the proposed ordinance on the County website and had e-mail notices of a public meeting to the industry. On September twentieth we conducted a general public meeting, we explained the ordinance and we invited industry comments. On October fourth the department issued a business impact statement notification and proposed ordinance that was posted on the web and e-mailed to all of the industry stakeholders with a November second deadline, we elongated the business impact statement; NRS Two Thirty Seven requires fifteen working days, we allow for this particular ordinance twenty working days. October fifteenth we conducted two public meetings with the partners. We conducted

HOLLOWAY (continued)

a public meeting with a third party private - party providers. The industry gave general comments mostly regarding pricing and the FCC order and stealth concern, and let me explain stealth. Stealth is the shrouding or covering of equipment. We also met on that same day October fifteenth with the industry - I mean with the carriers and their comments were mostly related to the pricing and fees, FCC order and stealth concerns. On October sixteenth we conducted a public meeting with the engineering and that was also mostly regarding the FCC order and stealth concerns. On November second the business impact statement deadline ended, we did receive from the industry the ordinance where they had red lined through and made some changes and some comments. Based on that, we delayed the ordinance from the Commission agenda so that adequate consideration could be given to the industries responses and several of the industries requests were made. We did present to you the last Board of County Commissioners meeting the business impact statement along with the introduction, included in the business impact statement, starting on page eleven, we identified all the areas in which we modified, and then we also included the areas in which we did not modify and why we did not modify them. I will walk through - we sent a grid out to the industry, it was a high level - kind of high level concepts that we changed; we looked at semantical issues like if they wanted to change out a word for another word that made better sense for them; we made grammatical changes, and other smaller changes - these are high level and just to point to a few of those; the first one to mention is that the effective date on this ordinance is July one, twenty-nineteen, we made this effective date so that we would not have to prorate their fees, so that the industry as well as the department would not have to make sweeping system changes. We also made a change to the remediation of existing facilities, we extended those dates to December thirty-first twenty-twenty-three for the Las Vegas Boulevard District and December thirty-one twenty-one for the Central Communication District. We did that because we wanted to be aligned with the Public Works paver project, and what Public Works is

HOLLOWAY (continued)

to re-pave, they're also planning to lay conduit which is certainly a benefit to the industry, and they also have a capital improvement process to be able to take up the existing poles and to construct the smart poles, so therefore the industry will not have to bear the costs of remediation, that cost will dramatically decrease. We also asked if the carriers could accommodate two licensees with a shared antenna. The industry indicated that five-G cannot work with a shared antennas, we changed the language to say, "the shared antenna is only required if technologically feasible", so five-G has not ruled out yet, so the equipment manufacturers are still working on what kind of equipment will sufficiently handle five-G. We did make a change to a requirement, the requirement that the licensee must use an available municipal facility if it's within a seven-hundred feet radius of its' intended location, we reduced that down to six-hundred feet requirement. This is not a distance restriction. What this is - is that we're asking the industry if there is a pole available within six-hundred feet, we would rather for them to use that pole instead of having to construct new poles. We're concerned about proliferation and over construction on the Las Vegas Boulevard Strip, so that's what that's about. We also added provisions where if there's two carriers on a pole and if they bear any cost then that cost can be shared. There was one distance restriction and it was a separation between the facilities of a provider or licensee at six-hundred feet. Currently today it's nine-hundred feet, we reduced that distance requirement to three-hundred feet. There was a question related to macro towers and why did we not define them, instead of defining them, what we decided to do was to look at size limitation related to a volume measurement, so the size limitation of antennas is related to the size limitation to the volume measure - measurement and it should not exceed six cubic feet and that is in line with the FCC order; related to the size limitation of equipment we decided to make that volume measurement not to exceed twenty-four cubic feet, so it really doesn't matter what kind of tower it is as long as it fits within the cubic feet volume



HOLLOWAY (continued)

measurement, kay. Now the twenty-four cubic feet is slightly off. The FCC allowed for twenty-eight cubic feet. We did based on the - the industries comments related to fees, we reduced the fees for residential, commercial, and manufacturing districts from twenty-five hundred dollars a year to nineteen-hundred dollars a year. The national average that we've studied and revisited is two-thousand dollars a year, so we made that particular fee under the national average. We did change - when certain fees would begin; the initial site license fee would begin one-hundred and eighty days after the SLA is signed; we changed to one-hundred and eighty days after the SLA is filed by the licensee and accepted by the County. We had an annual fee adjustment for the site license fees at three percent, the industry wanted two percent; we made that change, and the effective date of the annual increase of those fees, we changed from July one twenty-nineteen to July one twenty-twenty. Now, also in the business impact statement, we stated that there were some areas that we did not change. There was a requirement for the definition - well the industry basically said municipal facilities excluded traffic signal poles and school zone flashers. We were concerned for public safety reasons and we felt that traffic signal poles are not included in the definition of a municipal facility because we were concerned about the interference with traffic signals, so if something went wrong with that pole there could possibly be some interferences. There was a request to define a person as a wireless service provider and I believe this come from the tower companies, we did not make that change because tower companies are not wireless service providers they are in fact landlords. There was a request that said in the case of an emergency it becomes necessary for the County to remove any of the licensee's equipment no charge shall be made by the licensee to the County. The industry wanted to say there should be no charge by the licensee only when the emergency involves the immediate threat or harm to persons or property. We felt that emergency situations could occur that do not involve the immediate threat or harm to persons or property, but as

HOLLOWAY (continued)

a requirement and as our responsibility immediate action will be required by the County, such as clearing a roadway that is blocked by a down pole. The use fee of five percent of the gross revenue - changing the fees from seven-hundred dollars to thirty-nine sixty per pole in the Las Vegas District, the industry indicated that those fees should be eliminated and that the wireless site license fee should be reduced in all districts to two-hundred and seventy dollars per pole, and we felt that the County and one of the main purposes of this project is for us to have more sophisticated program management to have ease of permitting - to streamline the process so we felt that the County will be incurring additional expenses and implementing a wireless communication policy that requires for that management in the County's right-of-way that will require permitting, compliance, and maintenance, and capital improvement in the right-of-way, and Mr. Chairman if you will indulge us for a few more moments we would like to make our business case. Jonathan Montfort has worked on some numbers here and I would like to have him (unintelligible) Kevin would you pass this out to the Commissioners?

JONATHAN MONTFORT

Good morning Commissioners. Jonathan Montfort, Smart Works Partners. First draw your attention to the lower left hand corner. That's an average rent, we just took a assumption that fifty percent of the sites would be in the high rent district, fifty percent would be in the non-high rent districts and average that out, just arrive at an average income figure. On the upper left corner, you'll see an estimation of a number of hours that it takes to manage and bring a site into fruition from the County's perspective, whether it's outsourced or within Public Works or however it's done, and on the right you'll see a average annual expense associated with managing these over a five-year period, so you see an average expense of about twenty-seven hundred dollars, average income of about twenty-nine hundred dollars, so about two hundred dollars per year in what could be considered profit, for a properly managed program. A properly managed program, I'd just

MONTFORT (continued)

like to point out that we went out and audited one-hundred and fifty of the actual small cells that were built, we found ninety percent of those to be out of compliance with the master license agreements that is they had installed equipment on the pole when their master license agreement says you cannot install on the pole and we found about a fifty percent compliance failure rate with the permits that were filed and issued and stored on the Public Works file documents, so what it really comes down to is having accountability for the wireless carriers to install as they have agreed to in the contract and as they have agreed to on permits.

HOLLOWAY

And the next example we have because I have mentioned that Public Works and Randy and I - we're looking at taking the leadership in swapping out the existing poles and constructing and maintaining through the County's capital improvement (unintelligible)- yes that is correct, to be able to install a consistent pole throughout the Strip, and so we will have capital improvement costs, so what I will have Jonathan to now explain is what Public Works costs per pole would look like, and keep in mind we try to cost out everything per pole.

MONTFORT

Okay, this is a document that came from an industry pole manufacturer on the cost involved to install a pole as well some of the material costs. This does not include the radio and antenna costs. Those costs are a little harder to put your thumb on, a lot of the wireless carriers are financing or have complex purchase agreements for that equipment. What you'll see here is that between the process to get a site built and the actual cost of the poles and concrete and conduit per site, you're gonna have roughly a twenty-five thousand to twenty-four thousand dollar cost to install a smart pole. Those costs could be higher depending on the type of pole that's selected. For the capital improvement that Public Works is proposing, their planning to build two laterals, one for fiber, one for power for the benefit of the wireless carriers down the Strip as that repaving project happens, that would happen at about every light pole that's currently

MONTFORT (continued) existing, so we estimated that cost at the rate of one-hundred dollars per linear foot which was given to us by Public Works to be about one-point seven million dollars.

HOLLOWAY Okay, so Commissioners, Mister Chairman, that concludes our presentation. If you'll now open the public hearing and then we are here - I'll here - Michael Harwell who helped to draft the ordinance and Smart Works, and myself, we're all here to entertain any questions.

SISOLAK Okay, you wanna let me open up the public hearing or do you want Mike to speak now? I'm not - I got confused -

HOLLOWAY Pardon me?

SISOLAK Do you want me -

HOLLOWAY Yes Sir.

SISOLAK After the public hearing.

HOLLOWAY Yes, yes Sir.

SISOLAK Okay, this time I'm gonna open the public hearing on Item Number sixty-one. Anyone wishing to address the Board on Item Number sixty-one, please step forward and identify yourself for the record. Comments will be limited to three minutes. You cannot combine comment periods. Sorry Commissioner. That was brought up, so I had to clarify.

SANDRA DOUGLAS-MORGAN Good morning Mister Chairman, members of the Commission. My name is Sandra Douglas Morgan. I'm the Director of External Affairs for AT&T and I wanted to initially speak on behalf of the wireless community and the wireless infrastructure community, as Ms. Holloway mentioned we worked together and what we will characterize as a shorter time frame and was about four to six weeks to come up with comments and response to this proposed ordinance, and it was not only AT&T, it was Verizon, T-Mobile, Cox, Crown Castle, (unintelligible) and Mobility who worked together to provide these joint comments based on our concerns with this

DOUGLAS-MORGAN  
(continued)

ordinance. We have in the audience today who will also provide comments Ms. Danielle Agee whose council for Verizon, Nick Magione, and for T-Mobile, Rob Delarosa, and Craig Stevens from Cox who would also like to make some comments. Without going on my line just three general areas. First of course would be for us the need to have a master license agreement in addition to a site license agreement, in addition to a permit for each and every small cell that this industry puts up is not only an owner (unintelligible) for the industry, but we would also submit for the County as well, and that is something that we brought up not only in our industry meetings with your consultant, but have regularly and routinely brought up during this process. The second would be the distance separation requirements that are also included in the ordinance. I think with the design and the stealth concerns that you've put in this ordinance that the industry has said that we would comply with should negate the need for those distance separation requirements and what's currently in place, although they mentioned going down from seven-hundred to six-hundred feet, that's one per two football fields, so we're talking a significant amount of distance here that we would like to see reduced and finally, the - the FCC order. There was some mention about the industry saying it needed to be two seventy because that's what's in the FCC order. That is true, that - that is the - that is the rate that the FCC has determined to be reasonable, however we have said that if there's going to be a cost base analysis done by not only the County, but any other local government, the industry as a whole would like to look at that, and the numbers that were put on the screen that I was personally unable to see, that would be the first time that we have seen any type of cost analysis done by the County. We'd be happy to review it, happy to look at it, and would like to at least comment on it, but that was the first time that I know I was personally able to see that today. So, with that I would like to turn to some of my other colleagues in the industry if there's any questions.

SISOLAK

Good for right now. If anybody would like to come down and speak. Thank you. You might not want to go all the way back up to the top, all the people who are testifying so we can ask questions. Morning.

NICK MAGNONE

Morning. Hello, members of the Commission. For the record, my name is Nick Magnone and I am a Verizon wireless network manager in our regional field engineering department based out of Phoenix Arizona. I would like to make some comments on behalf of Verizon regarding the technical requirements of the proposed wireless ordinance. First, I want to thank the County staff on the partnership and collaboration for our current and past implementation of wireless communication facilities throughout the County. For this proposed ordinance to amend Title five, Chapter five point zero two, it is too prohibitive and affects the deployment of current and future technologies from Verizon. Specifically, Sections five point zero two, one twenty, one thirty, and one forty, have design requirements that are difficult and unclear for our implementation of new wireless communication facilities throughout Clark County. These proposed design and technical standards are too restrictive for the following reasons, they required certain light pole types and designs with sharing of antennas with different carriers. The minimum spacing requirement between our facilities is too high of a separation for future technology and the need for concealment of equipment within the light pole interior is not feasible at this time. A recent modification to the proposed ordinance as of November twenty-eighth added that some of these requirements are only needed if tech - technologically feasible. However, how is the feasibility determined from each provider and what happens if it is not technologically feasible? There is no stated process for this. For the Board's edification, we want to convey that it is our desire to deploy the best possible future wireless technologies in Clark County and we are seeking policy that enables us to do so in a partnership with Clark County. We believe that the ordinance as written does not permit us to do so. With regards to technical aspects and because of these design requirements

MAGNONE (continued)

we respectfully request the Board to delay a vote on this proposed ordinance so that further partnership with the industry to determine amenable changes that can be done. Thank you for your consideration.

SISOLAK

Thank you.

DANIELLE AGEE

Good morning, Commissioners. My name is Danielle Agee. I'm the market general counsel for the south central market of Verizon wireless based in Irving, Texas. We - we reviewed your proposed ordinance and appreciate your intent to develop small cell regulations to protect the interests of the County. However, respectfully, we have identified several provisions which raise concerns and are in conflict with the federal telecom act and also the recently adopted federal infrastructure order. Verizon re-desires to make a significant capital investment in Clark County. We need to deploy small cells to meet today's growing demands on the four-G LTE network and also to bring benefits to the - of the emerging five-G technology to the County. This ordinance, however, will materially inhibit our ability to do so. As drafted, the ordinance will not allow Verizon to invest at the desired level. We provide a detail on this topic through the business impact statement submitted a few weeks ago. My colleague, Nick Magnone, has focused his comments on the technical requirements and my partner from AT&T has provided some high level concerns but I'd like to go into a few more in a little more detail. Under this ordinance, the annual rates range from seven hundred dollars to thirty-nine sixty per small cell facility, depending on the location. The FCC established, as we've talked about here, a presumptively reasonable rate of two hundred and seventy dollars per year per facility, based on a review it had conducted of recently-adopted small cell legislation across the country. For illustration purposes, the following annual charges are imposed in the following states: forty dollars in Al - in Oklahoma, one hundred dollars in Arizona and Tennessee, and two hundred and seventy dollars in Texas and New Mexico just to name a few. The FCC also made clear that localities may charge higher fees to

AGEE (continued)

recover their objectively reasonable costs so long as the locality provides a showing that the fees imposed are a reasonable approximation of costs, that the costs themselves are reasonable, and that the fees are non-discriminatory. We respectfully request that the County commission a study, and provide it to the industry before imposing much higher fees. Also notably Verizon has an existing contract with the County that was executed in December of twenty fifteen and that contract does not expire until twenty twenty-five. This ordinance would - would be effective on July one twenty nineteen for those providers with existing contracts and would also require remediation to be performed for all existing sites beginning in twenty twenty-one. We're doubtful that the terms of the ordinance could be applied retroactively to alter the legally-binding contract that already exists so that will require some further study. We would appreciate the opportunity to sit down with representatives of the County to discuss these concerns and move together in an interest of creating an ordinance that provides for public protections and also provides a fair and reasonable process for deployment of the next generation technology. We've successfully partnered with localities across the country and would like to do so here as well. Thank you.

SISOLAK

Thank you.

ROD DELAROSA

Good morning, Commissioners. Rod Delarosa for the record, senior site and advocacy manager for T-Mobile here in the west region. I agree with my colleagues here. We - we don't agree on a lot. We're competitors, so for us to come together and agree on some things just shows you how big of an issue it is. I've been working for - for T-Mobile for the past thirteen years, proud to have a market here in - in Las Vegas where we have an arena with our name attached to it and continue - want to continue investing into the community. But I'm here today, first to thank the County for its continued attention to the important issues surrounding the deployment of next generation wireless networks and we talked about three already and I just wanted to be clear, 'cause I get cut off at the end after my prepared remarks, that we agree that we would



DELAROSA (continued)

look for a delay and - on this matter. And the three things that we're talking about specifically are separation distances, they're too - too far - too far apart - from going from seven hundred to six hundred is still not gonna do it. Looking for a cost-based analysis that we haven't seen until right now, which again, I agree, I didn't have a good chance to absorb it and in the process that AT&T mentioned earlier. In regards to five-G, we were here a couple weeks ago, T-Mobile, at our arena with a tech truck where we showed the public what the future of five-G is. It'll be critical to meeting the ever-growing demand and expectations of our customers and your constituents, and T-Mobile is ready to support the County as a leader in five-G, but we need the infrastructure in place to make that vision a reality. Current four-G services does not have the bandwidth to connect the number of sensors, smart utility meters, cars, and robots expected for the upcoming five-G revolution. Five-G will be ten times faster than our current speeds, be more responsive and capable of carrying more data than existing networks so T-Mobile can respond to consumer demand for faster, more reliable service. Five-G's faster speed will enable the (unintelligible) of things in which everything from home appliances, asset tracking, self-driving cars and implanted medical devices are connected to the internet. This is important as it will impact health care, commerce, industrial production, drive economic development, improve citizen experience within the city and attract new residents and investors, and all the while promote peace of mind within your community. Investing in wireless infrastructure and small cell technology will help communities keep up with technological advancements so they can ensure this economic opportunity and prosperity. Our goal is to put our customers - your residents and visitors - in position to receive the full benefits of these technologies. Wireless has allowed for the human imagination to flourish in ways we've never imagined. Five-G will accelerate and enhance that. Now, realizing these benefits requires the deployment of and investment in infrastructure necessary to operate those networks to facilitate that investment, it's critically important that Las

DELAROSA (continued)

Vegas - and other jurisdictions - adopt predictable processes and cost-based fees and reasonable design standards. So, lastly, just to end, we remain ready and willing to discuss these issues with you - with you further and would not -

SISOLAK

Thank you very much for your time and your comments.

DELAROSA

Thanks for your consideration.

SISOLAK

Yes, sir.

CRAIG STEPHENS

Good morning. Craig Stephens, Cox Communications. There isn't much to add on the matter as brought forward by the wireless carriers you've heard earlier. However, I would like to point out that after speaking with staff, I'd like to thank them and the members of this Commission for removing stipulations in this ordinance for strand-mounted small cell antenna. Cox agrees this type of facility should not be under the guise of this regulation and we appreciate the work by staff and the Commission in getting this resolved pretty quickly. We appreciate it.

SISOLAK

We appreciate your comments and the brevity therein contained. Appreciate it.

MATT WALKER

Good morning, Commissioners. I'll try to match that brevity. Matt Walker on behalf of Extenet. Again, I wanted to thank staff for all of their hard work, especially the technical advisory committees that resulted in significant improvements to the - the design standards. I - on behalf of Extenet, I did want to ask for additional clarification in today's discussion. All the type one through five poles are designed with specific intent in terms of their size and the amount of carriers. We wanted to clarify that - I mean, we understand from staff that there was agreement that there should be no specific carrier limit, so when there is a multiple carrier pole that, as the technology evolves and allows for multiple carriers - three or more carriers - to locate on that piece of infrastructure within the parameters of the

WALKER (continued)

design criteria, that it would be allowed to do so. So, we hope to have some clarification in the conversation today and thank you for your time.

SISOLAK

Thank you. All very brief. Anyone else wishing to participate in the public hearing on item number sixty-one? Seeing no one, I'm gonna close the public hearing. Miss Holloway, did you want to follow up? Mike, did you want to say something? Did you - do you want me to turn it over to the Commissioners, or - if you've got something - can you keep it brief to - I don't wanna go through the whole presentation again.

HOLLOWAY

Yes sir. We - we understand. We - we - we just wanted to follow up. We have the three general areas and aspects and the distance restriction as we noticed today it's nine hundred square feet. We've reduced it down to three hundred.

SISOLAK

Linear feet.

HOLLOWAY

Linear feet, yes. And I do not believe that the FCC order requires for us to do a cost analysis. I mean, I think that's more of an internal document to that. We did kind of want to speak to the MLA, SLA, and the encroachment permit. What we were trying to do, when we negotiate contracts with - with various carriers, we're negotiating different kinds of contracts. So with this ordinance we're trying to have consistent routine language in the ordinance which will then reduce the length of the MLA, so the MLA should be a very streamlined document. And - so then now we have also the SLA, which will be a very streamlined document. That is a document that tells us where our assets are being used. That SLA actually gives the industry the authority to use your assets and we wanna be able to track those assets. Now one of the things we've been talking about is trying to have some workflow management so that it'll make it easier for the industry to be able to access and - and submit their permits. It will be an elect - electronic system with a role for management so that they don't have to bring five or six different pieces of paper. That's something that I really would like to - to work

HOLLOWAY (continued) on toward implementation. So I think at this point we don't have anything else, your honor, to - to add to the comments. We appreciate the industry and - yes, your honorable sir. And - and -

SISOLAK Whoa! Whoa, Your honor!

HOLLOWAY And we will continue -

SISOLAK You must be - you must be talkin' to Commissioner Gibson down there. Your honor - I don't know.

HOLLOWAY (Laughter) We - we - we are committed to continuing to work with the industry because we won't be able to implement it - implement it without their - their involvement.

SISOLAK Okay. Okay, let me get some Commissioner - do you have more testimony before I can take Commissioners? Let me ask two questions. Are we allowed - or maybe these are for Mary. Is it my understanding that we're allowed to charge the actual cost - is that what the federal -

MARY-ANNE MILLER Yes.

SISOLAK Okay, the cost? You've got something to say?

ANTHONY PEREZ Yes, Anthony Perez with Smart Works Partners. Actually the FCC order is not in effect yet. And just yesterday, the state was filed. So, but under that order it is it is cost-based recovery but that's not in effect yet and and we anticipate that (unintelligible)

SISOLAK And who are you with?

PEREZ Smart Works Partners

SISOLAK Our consultant

PEREZ Right

SISOLAK But our attorneys sayin that we're allowed to charge cost and you're disagreeing with her?

PEREZ Oh no, sure, you're allowed to charge cost but right now that order is is not in in effect that

limited to cost.

SISOLAK Got it. Okay. So that's good. Okay. So, how is it that at one plane, and this is for you Jacqueline, the pole is cost twenty-nine hundred dollars and another, the exact same pole in another neighborhood is seven hundred dollars? How is that the cost?

HOLLOWAY We try to, that's - that district is the service improvement district. And we try to charge the seven hundred dollars. That will not necessarily be a smart pole. The smart poles are only going to be required on the Las Vegas Boulevard. And so they will be able to do various variations -

SISOLAK Okay, I guess what I'm asking is are we using the strip corridor to offset some of the costs in the neighborhoods?

HOLLOWAY Not - not that we're anticipating. We're using we're - we're trying to have incentivize the carriers to come into some of our service improvement districts. I don't see that it's offsetting, from my perspective.

SISOLAK Does it cost us twenty-seven hundred dollars? I mean -

HOLLOWAY Yes, sir.

SISOLAK Okay, I'll let questions from the Board. Commissioner Kirkpatrick. I can hear you down there. (laughter) Go ahead.

MARILYN KIRKPATRICK I know and I'm going to try not to be passionate today. Because I know at the end of the day, we'll probably need to have one more meeting with the industry. But I do wanna, Jacqueline that was an excellent presentation and I appreciate the great job that you did with kind of laying it all out, so I'm struggling to not take some of the words that were said as offensive because I was at every one of those meetings with the technical people that were there, not the attorneys, when we talked about the poles. So I find it very offensive that you're saying that from Arizona you're not gonna be able to come here and do business, Verizon, just to be clear who I'm talking about. I attended those meetings with the engineers who

KIRKPATRICK (continued) helped us craft some - some of that stuff so if they didn't relay it to you, shame on them. But between now and a meeting over the holidays that we gotta have, right, to do this, hopefully they can figure it out. But I stood in this room when they came down and they gave their comments on concerns and questions on the pole trying to understand. And what we heard more so than anything is we wanted to be flexible because technology is changing every single day. And so, they needed something that was pretty straight. So, I'm trying not to be offensive, it's the holidays but I - I have been at those meetings. So, I'm not seeing you all there. So my question is this? I-I want to understand and I think at the meeting Jacqueline and at least I hope my colleagues agree, that to have one more meeting next week right after Christmas before the new year and kind of walk through some of this in detail. I don't think we're ever gonna agree on the fees because I gotta believe that the industry is not gonna waiver from what the FCC says cause that would be silly on your part, right, but we gotta do what's in our best interest for our brand and how we keep things but I do want to understand the master license agreement. Is there a streamlined process that we can use so that we don't - and so at the meeting that we could talk about so that we don't have to make it so bureaucratic? It just seems that if people are coming and going and technology is changing, there must be a way to hold one person liable for everything and then go after them. And I'll be the enforcer, right, so I'm gonna be with you.

HOLLOWAY Yes ma'am, Jacqueline Holloway for the record. Yes ma'am, we can strive to look at a way. I think we were striving to look at a way of streamlining the SLA and the encroachment permit kind of combining them in some way. So yes, we can certainly look at - at that.

KIRKPATRICK Okay, and the other thing is I just hope that we can kinda walk through the two costs that we did. At least for me, the Strip is a unique place and we have to do everything to manage a whole bunch of things. One - one, we gotta make sure that we have access there, because today you go into the bell of a hotel, you can't even

KIRKPATRICK (continued) get, let alone Five G, you can't get even service to talk to - to move around there. Two, I know that some of the industry is paying three times this much on some hotel locations that they already currently have and so I'm going to reach out to the NRA to maybe get some of those numbers so that we can see we're not way off base, we're actually gonna save them some money. But, I also want to remind folks that public safety has gotta be number one and we have to ensure that on the Strip and throughout the valley that we don't put so many things on these poles that we can't get our own - our own stuff. So, for me, through my pathway, I learned that many of the older neighborhoods are unconnected. They don't get any service. And so we've been working for at least eight months to try and come up with a process for fiber as a whole so that we can even get five G when it does roll out cause it's not even rolled out yet. So, I wanna have these conversations. I - I'm willing to have a meeting but only I'm willing to do it between Christmas and New Year's because I could vote today and be fine, but I don't want to do that to my colleagues. So, I didn't hear anything else except for Section Five, One Twenty, One Thirty, One Forty, I - I don't have any sympathy because I was at the meetings and they didn't, that was not one of their concerns, right, to say that the technology, I feel like we've been down this road before when we did the great big ones, right, so back in the year Nineteen Nineties, A T and T had to be at a hundred feet, Verizon had to be at fifty feet. Everybody had a different thing and that's why we're trying to find a pole that can accommodate. So those are the things I'd like to discuss at another meeting. So, thank you Mister Chairman.

SISOLAK

Thank you. Commissioner Giunchigliani.

CHRIS GIUNCHIGLIANI

Thank you. I'm - I'm not so sure I need that, another meeting, but I won't be here anyway (laughter) so, whatever we decide to do. But I do I actually think staff has done a very good job in reaching out to the community. I understand the competition. I was, back in the day when Cox Cable used to fight back in the Legislature, so I remember way back on those.

GIUNCHIGLIANI (continued) But, I was a little offended, the Strip, forty-three million people that come to Las Vegas, the Strip should never be compared to Oklahoma, I'm sorry. You know, that was a little bit ridiculous as far as the costs you come up with on that part. I - I believe what staff is attempting to get to in this ordinance and we've been, regardless and set aside the FCC ruling because that's now number one stay, but, it's something we were working towards, no matter what. I'm trying to make sure we're doing business the right way. Those poles are very important. I don't want it cluttered where there's one every hun, fifty feet, a hundred feet. The co-location is very key to me. Making sure that we, and I think Jacqueline, you - you used the term and I appreciated hearing it, that the distance is not a restriction, it and that helped clarify that in my mind because I didn't want to put a barrier in. But what it acts is, is an opportunity to say wait a minute, maybe there is more of you that can locate on this and therefore we're not cluttering up what we have to do on the Strip. If you think about it, just the millions we spent putting in the ballards (sic). Everything is so congested now. We have to be sensitive to how that - that occurs. And I do agree with taking the traffic lights or signals out and those types of things. That still belongs to the public. And we still have to have an opportunity to place our own cameras or our own other equipment that needs, is needed. And if all of you are co-located on some of our stuff, we restrict our opportunity to be able to do anything for our constituents in the long run. So, what - what's most bothersome is, I don't think the industry has embraced the fact that we have underserved areas all throughout this valley and I appreciate T-Mobile showed me a potential five little circles in my district for example of where there's underserved. But we already know that there is dropped calls. Half of our resource centers don't have adequate, you know, internet opportunities. We have, I think the opportune, the zones that we're trying to create is not to subsidize, but is to say, if you come in to some of our neighborhoods and actually help our constituents, then the cost to us will be minimal because it's not the same type of pole



GIUNCHIGLIANI (continued) style that we're putting in on the Strip which is a higher grade or a higher, or I guess more classy than what we need in our neighborhoods. We just need to make sure people can communicate. But I just want to make sure Metro actually has an opportunity. If we expand Shotspotter, I, we had dropped areas so that our police were at risk because we didn't have places to be able to put things. And so, in my mind, this is a balanced approach, in the industry, you are never going to win everything or agree on everything, but I think in the long run, this - this gets us started. You can always have another conversation as its being implemented. But I don't, I'm not sure what will be, what will be the result of delaying any action on this but I don't where my colleagues are at on that part of it. I always appreciated knowing that the towers were not there because they are considered landlords. I did not quite realize that part so thanks for clarifying that. That's just some comments I have right now Mister Chair, thank you.

SISOLAK

Thank you, Anyone else? Commissioner Gibson.

JIM GIBSON

The industry surely knows that the appeal of the Las Vegas Strip. It's something that is of paramount importance to us. Its look, its feel, also its functionality. So, if Five G is available, and people are moving up and down the Las Vegas Boulevard, we, maybe more than any other jurisdiction, are going to care that people have access to the best and the newest technology on their telephones, or pads or whatever it is they use. The concern I have right now, is that feels to me like the - the gap between us and the industry is very large. And that's the reason why I had suggested to my colleagues we allow for another workshop, I'll call it. It needs to focus on a couple of things, in my view. We need to resolve all of the open questions about the technology. I've heard from some that a single Five G antenna will take care of a certain audience but not the entire audience. So for that reason, there needs to be fairly frequent poles, installed poles, that's probably the wrong term, but you need to have poles every so frequently or shorter distances so that we can accommodate larger

GIBSON (continued)

groups of people who might make demand upon the five G system. And it serves, it's service capacity is smaller than that of four G so the - the antennas and frequency and all that is something that needs to be sized or distanced or separated based on the technology to the extent that we have it. I have one question for our counsel. One of the things that we've been trying to do, I think, is move this along because there's like a final effective date of the order that is pending. I understand now there is a stay but that date was, I think, the fourteenth of January. Is that wrong now, so there is no effective date? Does anyone know the answer to that?

MILLER

There is a -

SISOLAK

Either Miss Miller or Miss Holloway.

HOLLOWAY

Yes, Jacqueline Holloway, Director of Business License, the FCC order would come into effect -

GIBSON

Will you speak up, please?

HOLLOWAY

Yes, the FCC order will come into effect on January fourteenth. A stay was filed on today, however.

MILLER

It was a motion for a stay.

HOLLOWAY

A motion for a stay.

GIBSON

A motion for a stay.

HOLLOWAY

Yes.

GIBSON

Well, in any case we need to make sure we have enough time, that the technology is understood well by us, and it'd be nice if the industry could give us a, with a single voice, what the status of the technology is, because actually, even in my briefings, I took away that different companies have different views about their needs and their technological circumstances, the equipment that they're using and what it's capable of. So, I think that we need to focus on the technology to be honest with you, because we're not, it's not going to do us any good to agree we're going to have Five G then have it

GIBSON (continued)

require a picket fence of smart poles in order to accommodate the technology and to meet the needs of the pedestrians in a pedestrian realm that is probably every bit of much trafficked by folks as anywhere there is in the world. We have some times, certain times, when maybe we'll have to move in mobile equipment to accommodate their needs, we do that already at the Convention Center, but the - the everyday activity needs to be accommodated. So, I - I, what my hope would be is that we would not take action today. I'm fine with doing it during our first meeting in January but that's going to require a lot from people. But if you don't want to go forward today, it seems to me, you'll make arrangements for the technological expertise to be available here in Las Vegas at a time when we have a workshop so that we can get to the bottom of these questions. It's not going to do us any good to adopt something that isn't workable. I don't know that I believe that in a place where forty plus million visitors frequent, that any of the providers are not gonna want to be here. I think they're all gonna want to be here. I know none of them wants to spend more than they have to spend. I get that, I think we all get that. The biggest concern is that we come together so that we know what we're doing. And I don't know that I feel comfortable that we know what we're doing. For instance, our, we worked with a consultant. Our consultant helped draft the language. The distance separation of the equipment, as agreed to in the Verizon contract, is - is I think it's three hundred feet. And, I don't know why it's three hundred feet. But it is, isn't that, you know what, don't answer my question. That's what I think it is. Now we're saying that if there is a public pole within six hundred feet, we want people to use it, well what does it do to the frequency of the - of the signal if you have to use a pole that is within six hundred feet when your needs are three hundred feet. So, I don't, I don't understand all of that. I do understand that we are talking about public infrastructure here, but we don't want to have, as I said, a picket fence of these smart poles every hundred feet or every two hundred feet or something. Next, I don't think it should matter to us what Oklahoma charges except we're not talking about spending money to

GIBSON (continued)

support the brand here. It - it - it, no matter what ends up comes out of the FCC, right now the discussion is around cost recovery. So, we should be talking about whatever our costs are and - and you know, I have no reason to disbelieve what you've put in front of us but the discussion should be focused on costs, not on anything else. So I - I - it'll be my view that we should move this to the first meeting in January, try and have a workshop, try to get everyone in the meeting and see if we can't iron out some of the issues that continue on. And this is one time when you better be there. Because if you're there and you give us the input and we can understand and have an exchange on the detail and the data there are available to us, we can make the right decision. But I don't think we should take action today.

SISOLAK

Commissioner Weekly, did you have anything to add? No? Commissioner? Commissioner Kirkpatrick, back to you.

KIRKPATRICK

Thank you Mister Chairman. And I just wanna, I wanna back up a minute and remind the industry how we got here. Right, two, a little over two years ago, because it wasn't even in our budget and we had the conversation about smart communities. And, I want to do this for the record, Mister Chairman, so it's no, it's - it's a rush and we're trying to get ahead of the curve. And for once, the county is not being a dinosaur when it comes to technology. For heaven sakes, the industry came to us two years ago and said, oh my gosh, we got to start doing these things, we want to do more. You all started fighting among yourselves that we said time out. We got to hire a consultant because we are not savvy enough to understand all this. Because the last time any of us had cell phone conversations were in the nineties, when we did the big towers and reminder that Five G is not out there yet today but we want to be ready. This is, and I get that you didn't get to work with the consultant until five or six weeks ago. But at the end of the day, it's our job to work with the consultant to figure out what we want to do and what is our vision. And our Strip corridor is our brand. That is what generates eighty seven percent of the revenue for the entire

KIRKPATRICK (continued) state. So, we gotta protect it. So, I just want to remind folks, this is not a rush. This is, we've had the meetings. We did the meetings where we said buy your technical people because, for heaven sakes, all the lobbyists in the world, they don't know the technology component of it. That's not their job. That's why we invited the technical people. So, yes, I'd like to get this done, because in between all of this conversation in the two years, the industry went out, went and did something with the FCC, we learned about it by accident, quite frankly, when the State was saying hey, we're just gonna char, we're gonna do a one stop agreement. At that was all of Southern Nevada government and elected officials in a room going what? What did you say? Can you repeat that one more time? That's why now we're rushing because you guys have done everything as an industry to work around us, so to sit up here and say we wanna, we wanna fair seat at the table, are you kidding me? You're the one that went all the way around us. So, I'm just saying I'll do this meeting. The next time you all better be right because if you remember correctly, at the last meeting, I said, you all can all sit in those chairs, but if you start lobbying the sixth floor, which is exactly what you all did, here we sit. If you think you're killing us, you're not. I will torment you with it forever because I've been working on this for two years, because the industry brought this to us and said we need to be part of the cutting edge. Fact, we actually put money in our budget for the first time ever last cycle to do all this. So, I just want a clear reminder of how this all came about. It wasn't us all by ourselves. So, for those of you that haven't been part of it for two years, now there's a record on how it started. So, thank you, Mister Chairman.

SISOLAK

Does that conclude your presentation? (Laughter)  
Okay, I just want to caution the Board, I'm happy going either way. I am a little hesitant about moving this back to the first meeting in January because you are going to have three new commissioners here that have not been brought up to speed on several items, this being one of them. As you said, you put two years into this. It's going to take some time. Both -

KIRKPATRICK I'll bring them up to speed Mister Chairman.

SISOLAK I - I - I know but I know the industry wants a chance to bring them up to speed on their sides. I want adequate time so everybody can, you know, get on the ground, get their feet running. So -

SISOLAK (continued)

GIBSON Maybe, maybe, it's worth asking our counsel what prejudice may, accrue to our side of this thing, if for instance, this stay is not granted, and the effective date continues on even though there is litigation pending. If that's alright?

SISOLAK Sure.

MILLER If the stay is not granted, the FCC ruling will go into place. However, this ordinance is crafted, and to comply with the FCC ruling, so the fact whether or not it was pre-existing or adopted post doesn't affect its validity, so there isn't that pressing need to get it done before. However, I would caution you that you have opened the public hearing so once you close a public hearing, you only have 35 days to act on an ordinance or it has to be renoticed.

SISOLAK You know I don't know what the will of the board is. I can attest, I remember and I appreciate what you're saying, Commissioner Kirkpatrick. I remember the first meeting we had on this, that I called the meeting with Cox Comm, I think it was Cox, it was asking for their licenses and some people, Jacqueline, you were there nodding your head, in the Joshua room upstairs. So that was, I don't know how long ago that was. I don't even, If you were on the board at that time.

KIRKPATRICK Yes, I was.

SISOLAK Okay, It was - it was a while ago. So, it's been awhile. Sure. Commissioner Giunchigliani.

GIUNCHIGLIANI Thank you. So, in politics long enough, sometimes the delay, not necessarily intention on our part, becomes to the advantage of the ones who constantly oppose things. So I think we have to be very careful about what the problem is with this ordinance that's before us today. In my mind, it took suggestions, it made the

GIUNCHIGLIANI (continued) changes, not all of them, and I think when they started the testimony today, there are three items they still don't like. But that's our job as to not, we try to compromise where we possibly can. But sometimes, we have to actually act on behalf of our constituents in Clark County and not on behalf of the - the - the individuals. So while I sense some folks want to delay, I'm not sure for what purpose. I don't know that they're going to come to any other conclusion with regards to the three items, but I think we've given quite a bit give and take throughout all of this especially when you look at the ordinance modifications. So I'm not sure, not why not, if we take action today to get the ordinance in place, that doesn't prevent anybody from sitting down and talking about modifications that can be brought forward. So I'm just trying to understand what the hesitancy is or what we think might be the outcome of not acting today.

SISOLAK Okay, well, it's on the agenda and if someone wants to - Commissioner Brown, do you want to speak?

LARRY BROWN I do.

SISOLAK Okay.

BROWN Thank you. So, Jacqueline, come back up. So, the distance, and I just need a better understanding so if it comes back at the next meeting, the distance has gone down to three hundred feet?

HOLLOWAY That is correct.

BROWN Now, the comments from the industry didn't recognize that. Is that a disagreement on how we define three hundred feet or how they need three hundred feet?

HOLLOWAY Well currently it's at nine hundred feet and, I - I think the industry wanted one hundred feet. I would like to call Director Denis Cederburg up. He's very good with explaining the length of the poles and what the three hundred feet means. He's very good at that. Sorry about that Denis. We had discussed that. He's very good at explaining that distance.

BROWN

And hopefully Denis brought pretty pictures so we can -

DENIS CEDARBURG

Denis Cederburg, Department of Public Works. As far as the distance requirement, we have reduced it significantly from the prior one. We have had different comments from the industry as what the optimal distance could be. And with the Five G coming forward, I don't know who knows what that distance will be with Five G. Because it's a lot, I understand it's a lot more sensitive to the surroundings; trees, buildings, other influences. Moving vehicles can influence it, I understand. So when you get to Five G, the densification may be greater and may, and they may be more closer than we, they are now, we don't know that. But we're happy and we think this three hundred feet currently with the technology they have today, does work. On the three, six hundred feet question and the three hundred foot question, if that's a compromise, we can eliminate, in my opinion, the six hundred foot requirement. Make it consistent with the three hundred feet.

BROWN

In - in our briefing, it was indicated that we, from an infrastructure standpoint, want to create this consistent pattern of structures along the boulevard.

CEDERBURG

Yea, what, what we're considering, since they're using our infrastructure now on the streetlight poles, and they have the ability to use every one of those streetlight poles now, so long as they maintain the distance requirements, so what we've done is, we're going to and we've discussed this with Randy and internally about taking our streetlights and making them smart poles and have co-location on them. And so that you, within a three hundred span, you can have six different providers, within that three hundred feet.

HOLLOWAY

(unintelligible)

CEDERBURG

No, I'm good. So, that's the frequency of the streetlights. They are about a hundred twenty feet apart and in some areas they stretch. In those areas where the distance exceeds with the



CEDERBURG (continued) streetlighted pole, streetlights over three hundred feet, they have the opportunity or we have the opportunity to install another smart pole. It may not be a light pole at the same time but it could be a smart pole and address the frequency requirement of the spacing that you need. So we know that in going forward, we'll have to adapt to any incoming technologies that you're going to deal with - with Five G. It's still not out there and they're still working on it. The antennas may be different. The infrastructure that houses the Five G could be totally different than what we see currently but Four G is still going to be there.

HOLLOWAY Right (unintelligible)

CEDERBURG So we're going to deal with two different generations perhaps three, I don't know if Three G is still out there but there's different generations of technology that we're going to have to deal with and adopt to provide the communication services that we want to see on Las Vegas Boulevard.

BROWN And I'm sure Six G is out there in the cloud somewhere (laughter). But I think it's well within our authority to A. protect the esthetics of the historic byway and also the public safety issue of just cluttering up that that Boulevard. Okay, so at least in my mind, at this next workshop, if that's what we choose, distance should be, we agree or we don't agree, it shouldn't be one of those. Now, the cost base, I think every, everybody has echoed this, if we can justify what it costs, either on the Strip or anywhere else, that should be a define, whether they question our costs per hour, that's legitimate but as long as we can defend that this is cost-based, very comfortable with that. And then as far as the process and the technology and as much as the industry speaking with a voice today, I think that's more on them because if Company A has a different design requirement than Company B or Company C, that's on them. That's not on us to provide individual design standards for all the different technologies out there. I just think that's it - it would be almost an impossible thing to do

BROWN (continued)

without destroying the integrity of the Strip. And then just, it's not so much a word of caution, it's just a - a perception I have. Recently, the last few years when technology, in this case in transportation, the TNCs, they came into this chamber and imposed their will. They told us what we, what they were going to do and how we had to respond because the Feds were behind them. I just, I caution the group today, and it's wonderful if - if legally we go down that road. But, if the word spoken today is looking towards a true partnership with Clark County, and having your technology and your companies on the Strip, you need the Strip as much as we need you to serve our customers and - and keep the integrity there. So, let's - let's approach this as a partnership, unique to Las Vegas, unique to the Las Vegas Strip, and not that the FCC ruling is gonna come down and we have to act accordingly. That that's the wrong way cause I - I'm, after after TNC incident, I'm going to do everything I can and certainly defend the County's right to - to protect and - and govern our community regardless of what someone in D.C. says or someone in Oklahoma says is their streetlight cost. I would encourage the workshop as a partnership workshop and try to get to a point, as close to a point of consensus as we can and then leave the decision up to the Commission. Thank you.

SISOLAK

Anyone else? Commissioner Weekly.

LAWRENCE WEEKLY

Yes, when the workshop is scheduled, when we come back Jacqueline, is it possible that you can bring something visual for us to maybe see, what does that look like in terms of distance?

HOLLOWAY

Yes.

WEEKLY

What does it look like with the equipment on the poles and just so that we have a visual idea of - of how that actually looks and then I'd be interested in seeing what's the difference between visually three hundred feet and six hundred feet. I'd like to see that as well.

HOLLOWAY

Yes sir, I'll make sure I have that.

SISOLAK

Do I hear a motion?

KIRKPATRICK                    Yep, I'll make one. (laughter) Like it or not, I'll make one. I make a motion that we table this till the January Seventh meeting and in between we have a workshop during the week of -

SISOLAK                        Okay, I'm going to interrupt you. Table it?  
KIRKPATRICK                   Or hold it.

SISOLAK                        Here if we hold it, you can bring it back. Tabling is a lot more -

KIRKPATRICK                   Oh Sorry. Oh no, I want to keep it rolling. January seventh I want to get with the new commissioners -

SISOLAK                        Then you want to hold it?

KIRKPATRICK                   I want to hold it till January seventh.

MILLER                         Can we -

SISOLAK                        You don't have to give us a date specific.

KIRKPATRICK                   Oh, I want to give a date.

SISOLAK                        You have thirty five days since I opened this public hearing unless I don't close it.

MILLER                         Don't close it. That would be my recommendation.

SISOLAK                        I think I already did close it.

MILLER                         To continue the public hearing till January seventh.

KIRKPATRICK                   Okay, I will make, I'm going to try this again. I will make a motion to continue the public hearing until January seventh and allow staff to coordinate a workshop between the week of the twenty-sixth and the thirty-first for further drilldown on this.

BROWN                         Mister Chairman, just to clarify with the D.A. -

SISOLAK                        Commissioner Brown's clarification coming. Miss Miller -

BROWN                         Was the public hearing closed and does that motion reopen and continue the public hearing?

MILLER I didn't note that it was closed but I could have missed, I noticed you opened it. But, in the event that you closed it, the motion would be to re -

SISOLAK  
SISOLAK (continued) How about if I reopen the public hearing? I'm going to reopen the public hearing.

MILLER Thank you.

SISOLAK On item number sixty one. Anyone wishing to testify who has not testified, please step forward and identify yourself for the record. Comments are limited to three minutes. Seeing no one, I am going to keep the public hearing open until January seventh and we have a motion from Commissioner Kirkpatrick -

GIUNCHIGLIANI So, can I just -

SISOLAK So does everyone understand the motion?

GIUNCHIGLIANI That's why I'm going to clarify. So the motion is to hold - to continue the public hearing until January seventh and then at that time, the Board can take action if they choose to.

MILLER That's correct.

SISOLAK We have a motion on the floor. Any further discussion seeing none, please cast your votes. Motion passes. Thank you everyone.

KING Item sixty-two is to conduct a public hearing

End  
/bk /km /rd  
2:46:08

## **EXHIBIT H**

VERBATIM TRANSCRIPT OF A PORTION OF THE REGULAR BOARD OF COUNTY COMMISSIONERS MEETING HELD DECEMBER 4, 2018 REGARDING ITEM NO. 63 (THAT THE BOARD OF COUNTY COMMISSIONERS CONSIDER AND APPROVE THE BUSINESS IMPACT STATEMENT, PURSUANT TO NRS CHAPTER 237, FOR THE PROPOSED AMENDMENTS TO TITLE 5, CHAPTER 5.02 CONCERNING RIGHTS-OF-WAY MANAGEMENT FOR WIRELESS COMMUNICATIONS FACILITIES, PROVIDING FOR APPLICATION AND ISSUANCE OF MASTER WIRELESS USE AND SITE LICENSE AGREEMENTS, SETTING STANDARDS FOR DESIGN, INSTALLATION, OPERATION, MAINTENANCE AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; ESTABLISHING FEES FOR WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; AND PROVIDE FOR OTHER MATTERS PROPERLY RELATING THERETO.)

2:40:42

YOLANDA KING

Item sixty-three is to consider and approve the Business Impact Statement, pursuant to NRS Chapter Two Thirty Seven, for the proposed amendments to Title Five, Chapter Five Point Zero Two concerning the right-of-way management for wireless communication facilities, providing for the application and issuance of master wireless use and site license agreements, setting standards for design, installation, operation, maintenance and removal of wireless communication facilities in the right-of-way in the public right-of-way; establish fees for wireless communication facilities in the public right-of-way; and provide for other matters properly related thereto.

JACQUELINE HOLLOWAY

Hi.

STEVE SISOLAK

Good morning.

HOLLOWAY

Good -

SISOLAK

Afternoon.

HOLLOWAY

Good afternoon Mister Chairman and Commissioners. Jacqueline Holloway, Director of Business License, and here with me is Michael Harwell, who is the technical expert on this particular ordinance, and worked tirelessly on the business impact statement. We have before you a business impact statement. We put together a very robust process for receiving comments and making modifications to the ordinance as a result of those comments. We do not have a presentation Mister Chairman, but you

HOLLOWAY  
(CONTINUED)

can go ahead an open public comment on the business impact statement.

SISOLAK

That being the case I'll open public comment on Item number sixty-three, anyone wishing to address the Board on Item number sixty-three please step forward, identify yourself for the record and comments will be limited to three minutes. Sixty-three. Seeing no one I'm going to close the public comment section on the business impact statement and turn it over to the board.

HOLLOWAY

Mister Chairman I would like to make recommendations.

SISOLAK

Commissioner Kirkpatrick.

UNIDENTIFIED SPEAKER

Point of order.

SISOLAK

Well - you, you can't have a point of order.

UNIDENTIFIED SPEAKER

<unintelligible>

SISOLAK

Excuse me, excuse me, excuse me, you can't have a point of order, you're in the audience. I opened up for public comment and you didn't stand up.

UNIDENTIFIED SPEAKER

Oh, it was actually about public comment on sixty, which there was no -

SISOLAK

You want to go back to Item sixty?

UNIDENTIFIED SPEAKER

I wanted to speak on it but there was no public comment, and then I got a text that said to do this. So I don't know the parliamentary rules I'm just wondering what the deal is.

SISOLAK

You can speak at the end when we get to the last public comment section on any item -

UNIDENTIFIED SPEAKER

Okay.

SISOLAK

So that - you're welcome. But sorry you can't have a point of order. I'm turning it over to the Board. Any - Commissioner Kirkpatrick.

MARILYN KIRKPATRICK

Thank you Mister Chairman and I guess I ha- I have some questions cause I can't believe no one

KIRKPATRICK  
(CONTINUED)

had any public comment on the business impact statement. You all kill me. In the industry. Honestly. So let me ask this, Jacqueline, on the process. Because there was no public comment the assumption is we're all good, right? And how did changes get made if there are some that, that make sense or don't make sense. So for me, I've been reading through the ordinance and then I have the sheet that you gave where you try to address every comment that you got. But crazy enough there's, the whole industry swears that we missed a whole bunch, so I'm trying to understand the process because as you know when I went to the workshops I said, speak now or forever hold your peace I am not holding this until January. I will throw the biggest fit this commission has ever seen if we do. So I want to understand what the process is, and I just want to put it out there so that y'all aren't surprised if someone goes to hold it and I go crazy. So -

HOLLOWAY

Yes Commissioner. NR -

KIRKPATRICK

Help me out here.

HOLLOWAY

NRS Two-thirty-seven outlines the process that we are to give notification on a business impact statement and there is three of, fifteen business days to respond. Or is that fifteen working and business -

MIKE HARWELL

Fifteen working days.

HOLLOWAY

Fifteen working days to respond. And in this case, back in December nineteenth twenty-seventeen we presented a set of recommendations to the Board related to the master plan for small cell <unintelligible> and what we did, we began to have our public meetings. So September eleventh we had our first general public meeting. And following that, we then posted our proposed ordinance on the county website, and emailed notices of the public meeting. On September twentieth we had conducted the public meeting, we explained the ordinance, and we invited industry comments. On October fourth the business impact notification and proposed ordinance posted on the website and we sent all of the information directly to the industry



HOLLOWAY  
(CONTINUED)

stakeholders by email. October fifteenth we had two public meetings, we had the public meeting with third party providers and we also had a public meeting with the carriers only. On October sixteenth we had a public meeting with the engineers and the professional technical individuals. On -

KIRKPATRICK

So can I, can I just ask, in between that, and I appre- I, I'm on your side right, so I appreciate the timeline because I feel like we've been trying to, to make progress, but there are some changes that I think we, we might have missed or I'd like to see in there. So what i- what is the process for some of that to happen? And I know that you gave us a list of fifteen comments that you got -

HOLLOWAY

Yes.

KIRKPATRICK

And so as this came out now, like, I find it interesting that we don't have a microcell facility even defined within here, right? I can't figure out under the definitions where that is? So I'm just wondering, what, what is that process? If, so are we assuming, that's why I'm asking, is so, are we assuming today there is no public comment, maybe you've gotten some additional comments. What is the process to go forward? Cause I, I, I just, I feel like we've been working on this for a year and a half.

HOLLOWAY

Yes we have, yes we have. If the changes are not substantial, we can take a look at those changes that you might have and work with legal to see if it's possible for us to add it to the ordinance when we bring it back for public, for public hearing. But the changes cannot be more substantial. They have to be less restrictive than what we have now, and that what we've posted. And then I, at the public hearing, I can read those changes into the record. And counsel can correct me if I'm wrong.

KIRKPATRICK

So, so, oh my gosh, this is a long day for me. So I just need to understand -

SISOLAK

We've got a ways to go, just so you know -

KIRKPATRICK I know it, I know, but I just, I, I'm super passionate about this because I personally have worked on it for a year and a half myself, so I guess I just need to understand, basically you're saying that if we want to make any changes to the, this ordinance though, we've got to start all over.

HOLLOWAY Nnn-

KIRKPATRICK And so I couldn't possibly make any changes to the ordinance if I want this to pass before December thirty-first.

HOLLOWAY That's not quite what I'm saying, I'm saying -

KIRKPATRICK Okay.

HOLLOWAY If you wanted to make some changes -

KIRKPATRICK That's why I'm asking again.

HOLLOWAY Yes, if the changes are less restrictive than the language that we have currently in the ordinance, there may be a possibility that we can make those changes and put it on the record for the public hearing.

KIRKPATRICK Okay. I, I mean, I don't, I don't necessarily understand the answer, cause I feel like I'm in flux if I want to make changes cause I don't know what's less restrict, I'm not the attorney but -

HOLLOWAY The, the department, along with the D.A.'s office, would guide you in that area. If we could, if we could reach out to meet with you, and understand what your changes are, and then we, we can guide you in terms of what would be less restrictive.

KIRKPATRICK Okay and so before, so I, I'm just saying for me it's hard to, it's hard to, so we had the initial working document, right, that we worked on and then we got a bunch of changes, and the size of the antennas like you changed that, and you changed some of the other things, but then when it all comes back for another piece, I mean, cause I, I find it interesting that no one said initially there's no definition of the

KIRKPATRICK  
(CONTINUED)

micro wireless facility. What is that today? What do, how do we define that? So, so I guess I'm just, I mean, I just barely got this draft myself on Thursday, so you know I spent my weekend trying to figure it out.

MIKE HARWELL

Mike Harwell for Business License. The micro cells, this, this ordinance is to deal with wireless communications in the rights-of-way, mainly installations on the, on the county street light poles and such. A lot, the macro cells would be on either private or public property, and that, this ordinance does not address those.

KIRKPATRICK

But that's the whole reason we're having this discussion. Right? So I, I find that, I mean at least for me, I find that interesting. So, alright, if you tell me that I can make some changes that are not restrictive, more restrictive, or substantial, I, I want to be ready for the next time.

SISOLAK

I, you got to be careful here that, I don't think Mary-Anne is committing in making any changes, it's going to depend what the changes are.

KIRKPATRICK

Well that's what, that's what I said. If you're telling me that as long as they're not more restrictive or whatever -

SISOLAK

But she gets to decide if they're more restrictive <unintelligible>. Okay she gets to recommend it and we get to vote on the recommendation, true. So. Whether you do it now or you do it later, that's, you know.

KIRKPATRICK

So I can say now all the things I'd like to see? I mean that, that's what I'm asking, what is the process on -

SISOLAK

When do you want -

KIRKPATRICK

On this one -

SISOLAK

Commissioner Kirkpatrick to make her recommended changes?

MARY-ANNE MILLER

If, if she could sit down with us or Business

MILLER  
(CONTINUED) License as soon as possible we could help guide her on those, which ones will be permissive without reintroduction of the ordinance,

KIRKPATRICK Okay, and that doesn't mean at another time we couldn't come back to redefine some -

MILLER Correct.

KIRKPATRICK Other things -

MILLER Correct.

KIRKPATRICK Correctly through a different process.

MILLER Absolutely.

KIRKPATRICK That's all I'm asking is the process, just trying to understand it.

SISOLAK Commissioner Giunchigliani.

KIRKPATRICK Thank you.

CHRIS GIUNCHIGLIANI So before us right now is just simply acc - accepting the business impact statement and based on that business impact statement we made modifications to what the industry said which is in our little comparison chart.

HOLLOWAY Yes.

GIUNCHIGLIANI Correct. Does this item that's before us incorporate these changes?

HOLLOWAY Yes.

GIUNCHIGLIANI Okay. So, then back to commissioner's question, if, if he she has additional changes that can be considered depending on...but when would that be considered?

HOLLOWAY At the public hearing

GIUNCHIGLIANI Okay.

HOLLOWAY Because today is -

GIUNCHIGLIANI Which will be at -

HOLLOWAY

Is just the introduction and the business impact statement. The public hearing will be December eighteenth.

GIUNCHIGLIANI

And for my edification I would like to make sure that we are creating enough of an incentive for the users to make sure that they're serving our underserved areas. Because that's my concern. Our, our east side of town has less fiber, less, less optic, less everything, and so for those that are in the industry that are sitting out here, instead of crying poor I would like you to make sure that you're looking at as an industry serving our poor, our, our older areas of town, plu- along with any of the new growth that has to come into play. But I think we now as a county are, whenever we're doing a public works project, we're adding whatever we can during that project now which will help with, with this information. So I want to make sure that on the remediation of existing facilities that had been to twenty-twenty-one I believe -

HOLLOWAY

Yes

GIUNCHIGLIANI

Now you based on the conversation from the, the individuals they've asked to extend that to twenty-twenty-three on Las Vegas Boulevard so that they can align it with Public Works and flood control projects?

HOLLOWAY

Public Works and Las Vegas Water District.

GIUNCHIGLIANI

Water district. So we <unintelligible> tearing things up, that makes good sense, okay, in the long run. And then, what about for any of our residential districts. I'm just trying to understand where is a commercial district necessarily defined.

HARWELL

Mike Harwell for Business License. The commercial district is defined as in Title Thirty.

GIUNCHIGLIANI

Okay so per t- per title. So it parallels what we have in planning, so we're not creating any new categories for that part of it, correct?

HARWELL

That's correct.

GIUNCHIGLIANI Okay and then, again point to me Jacqueline where, or Mike, where we're doing incentivization for underserved areas.

HOLLOWAY We do have some language in the ordinance that indicates that the Department of Public Works, as well as the Department of Business License, can look at incentive kinds of agreements. We wanted to keep it flexible so that if a carrier presented us with a proposal we could review that. And we do have -

GIUNCHIGLIANI Give me an example what that would look like as an incentive..

HOLLOWAY One -

GIUNCHIGLIANI Is it a pricing issue that they -

HOLLOWAY Yes.

GIUNCHIGLIANI Get a little bit of a break?

HOLLOWAY That is correct.

GIUNCHIGLIANI What if they sue us? Maybe we don't give them a break. <laughter> Oh sorry some of them are in the industry right in here. Well I mean because that's been part of it there's a letter that says, you know, we're going to threaten to sue the county if you do x, y and z. Well that's not working with us in good faith. We've spent a year and a half on this. I want to see my older parts of town benefited, and not be under the threat of a lawsuit. So maybe we increase it if they go <unintelligible>, maybe we de-incentivize instead of incentivize it. No, no Bob's telling me no. But I, I think that the industry needs to understand, this is about public policy and what's best for our constituencies who are in turn your customers. So I think working with us better makes it better sense in the long run. Okay so those are just some of the questions I have at this point. Thank you.

SISOLAK Commissioner Gibson.

JIM GIBSON Just to be clear, if we had a substantive change, we can discuss that with you too, and it

GIBSON  
(CONTINUED)

can be heard at the public hearing is that right? So it isn't just a change that would, I'm directing this question to counsel, it's not just a change that is, that, that you might categorize as less restrictive, but if we had a major problem with it, if there were something that we discovered over the next two weeks or over the next period of time, we can bring back something that is a substantive change, can we not?

MILLER

Yes you can.

SISOLAK

Anyone else? Commissioner Giunchigliani.

GIUNCHIGLIANI

Thank you. I want to clarify Commissioner Kirkpatrick's question about the micro cells. Are, are, do we have a whole nother set that we're going to be dealing with then at some point?

HARWELL

I believe micro cells - Mike Harwell for Business License - I believe micro cells are covered by zoning, comprehensive planning Title Thirty issues because it's a land issue, land use issue.

GIUNCHIGLIANI

And so they, but I think that's what started our whole conversation was that issue, so now we're back to this but doesn't really address that.

HOLLOWAY

Well I have Smart Works here that might be able to provide some clarity -

GIUNCHIGLIANI

Thank you cause you're our consultant on that part -

HOLLOWAY

Yes, yes, Anthony Perez he can provide some clarity.

ANTHONY PEREZ

Anthony Perez with Smart Works Partners, and it's a great question commissioners. And really what this ordinance does is it covers all wireless installations in the right-of-way, and it sets parameters, and those are seen in the design guidelines. So it can't be, they're size restricted. So we didn't say micro, we didn't use that language, but it's for any wireless installation, and it's the, the volume, or, or the size is defined clearly in -

GIUNCHIGLIANI Okay.

PEREZ The design requirements-

GIUNCHIGLIANI In the design requirements in Title Thirty.

PEREZ I'm sorry?

GIUNCHIGLIANI In Title Thirty.

PEREZ No. It's actually -

GIUNCHIGLIANI In this.

PEREZ It's, it's in the code here that we have. So if you're in the right of way, just to be clear comprehensive planning -

GIUNCHIGLIANI Doesn't matter what size.

PEREZ Well listen, there's size restrictions, in the right-of-way there are size restrictions and I can find you the code section, so regardless if you want to call it a macro, micro, or pico, or there's a small -

GIUNCHIGLIANI Small <unintelligible> -

PEREZ There's a whole bunch of definitions, so rather than trying to define something, we just said it has to be within these partic - this particular volume and this particular size. So regardless of what it is it can only be certain -

GIUNCHIGLIANI So volume was the guide rather than the size of the product then in the long run then.

PEREZ Correct.

GIUNCHIGLIANI Okay. And that's standard within the industry at this point?

PEREZ Yes.

GIUNCHIGLIANI Okay. So if Commissioner comes back then, in two weeks if we pass this for introduction, then we have to do public hearing. Things that could clarify that if that makes the public as well as industry as well as our folks, makes it better,



GIUNCHIGLIANI  
(CONTINUED)

that to me that's not a substantial change but then that's what Commissioner and D.A.'s Office will sit down and work through those parts of it. Okay. Thank you.

SISOLAK

Okay. Do I have a motion?

GIUNCHIGLIANI

I'll move approval with the changes that were noted by staff based on the business impact statement.

SISOLAK

We have a motion from Commissioner Giunchigliani. Any discussion on the motion? Seeing none please cast your votes. Motion passes. Thank you.

HOLLOWAY

Thank you Commissioners.

SISOLAK

Mary did you want to weigh in?

MILLER

I don't believe there was any changes presented to the business impact statement.

SISOLAK

No there were no changes.

MILLER

Okay.

GIUNCHIGLIANI

I, I guess, just for clarification for the record, I was, based on the business impact statement, changes were made and that was addressed in the ordinance we just recommended for approval.

MILLER

Correct.

GIUNCHIGLIANI

Thank you.

SISOLAK

Thank you. Next item.

END

/LS

2:58:31

## **EXHIBIT I**

## **WIRELESS USE LICENSE AGREEMENT**

THIS WIRELESS USE LICENSE AGREEMENT (the "Agreement") is dated as of December 1, 2015 (the "Effective Date"), and entered into by and between the County of Clark, a political subdivision of the State of Nevada (the "County"), and Southwestco Wireless LP, d/b/a Verizon Wireless ("LICENSEE").

### **Recitals**

A. WHEREAS, LICENSEE, a limited partnership organized under and by virtue of the laws of the State of Delaware, and duly qualified to transact business within the State of Nevada, has applied to the County for permission to construct, maintain and operate facilities within the County's rights-of-way, as defined in the Clark County Code, to provide communication services; and

B. WHEREAS, the County is the owner of Streetlight Poles (as defined in Subsection 1.16, below) located in the Rights-of-Way of the unincorporated County; and

C. WHEREAS, LICENSEE is registered with the Public Utilities Commission of Nevada as a Commercial Mobile Radio Service ("CMRS") Provider and is authorized to conduct business in the State of Nevada; and

D. WHEREAS, LICENSEE desires to use space on certain of the County's Streetlight Poles for construction, operation and maintenance of its telecommunications Network (as defined in Subsection 1.12, below) serving LICENSEE's wireless customers and utilizing Equipment (as defined in Subsection 1.8, below), certified by the Federal Communications Commission ("FCC") and in accordance with FCC rules and regulations; and

E. WHEREAS, for the purpose of operating the Network, LICENSEE wishes to locate, place, attach, install, operate, control, and maintain Equipment on the Streetlight Poles in the Rights-of-Way (as defined in Subsection 1.14, below), owned by the County, and on other facilities owned by third parties; and

F. WHEREAS, LICENSEE is willing to compensate the County in exchange for a grant and right to use and physically occupy portions of the Streetlight Poles.

### **Agreement**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1. DEFINITIONS.** The following definitions shall apply generally to the provisions of this Agreement:

**1.1 *Affiliate.*** Affiliate means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in LICENSEE; (b) each person or entity in which LICENSEE has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls LICENSEE. An "Affiliate" shall in no event mean any creditor of LICENSEE solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, LICENSEE.

**1.2 *Assignment or Transfer.*** "Assignment" or "Transfer" means any transaction in which: (a) any ownership or other right, title or interest of more than 10% in LICENSEE or its Network by reason of a merger, acquisition or other business reorganization is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of LICENSEE's assets within its Network; (c) the rights and/or obligations held by LICENSEE under this Agreement are transferred, directly or indirectly, to a party; or (d) any change or substitution occurs in the managing general partners of LICENSEE, if applicable. An "Assignment" shall not include a mortgage, pledge or other encumbrance as security for money owed.

**1.3 *County.*** "County" means the County of Clark, a political subdivision of the State of Nevada.

**1.4 *Commence Installation.*** "Commence Installation" shall mean the date that LICENSEE commences to install its Network, or any expansion thereof, in County ROW.

**1.5 *Commence Operation.*** "Commence Operation" shall mean the date that Equipment is installed and operational by LICENSEE pursuant to this Agreement.

**1.6 *Communications Services.*** "Communication Services" shall mean the services LICENSEE is authorized to provide as a Commercial Mobile Radio Service, as registered with the PUCN.

**1.7 *Decorative Streetlight Pole.*** "Decorative Streetlight Pole" shall mean any streetlight pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically found in standard metal streetlight poles. Decorative Streetlight Poles may not be used for the Network without prior written approval by County. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated streetlight poles owned by the County located in ROW.

**1.8 Equipment.** “Equipment” means the optical repeaters, Wave Division Multiplexers, equipment cabinets, antennae, utilities and fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by LICENSEE as a Subsequent Cell Site (and as defined in Subsection 1.17 below), and that comprise a Small Cell installation.

**1.9 Gross Revenue.** Not applicable due to LICENSEE providing communication services directly to the end user and the payment of any applicable business license fees that are based on revenue as provided in Chapter 6.13 of the County Code.

**1.10 Laws.** “Laws” means any and all applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

**1.11 Municipal Facilities.** “Municipal Facilities” means County-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, or electroliers located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Municipal Facilities does not include traffic signal poles or school zone flashers, or any related appurtenances.

**1.12 Network.** “Network” or collectively “Networks” means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by LICENSEE to serve its customers in the County.

**1.13 PUCN.** “PUCN” means the Public Utilities Commission of Nevada.

**1.14 Rights-of-Way.** “Rights-of-Way” or “ROW” means public property including air space, dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for County public street and public utility purposes, except as limited by any underlying grant, including rights-of-way granted by the United States Bureau of Land Management, United States Bureau of Reclamation or the Nevada Department of Transportation, and except public streets predominantly used for public freeway or expressway purposes, including without limitation the Clark County 215 Bruce Woodbury Beltway.

**1.15 Small Cell.** “Small Cell” shall mean the Equipment at a particular location that comprises part of the Network.

**1.16 Streetlight Pole.** “Streetlight Pole” shall mean any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the County and is used for street lighting purposes. Streetlight Pole does not include traffic signal poles, school zone flashers, or any related appurtenances, nor any pole supporting a streetlight that is made from any material other than metal.

**1.17 Subsequent Cell Site.** "Subsequent Cell Site" means each separate Small Cell installation where LICENSEE intends on installing its Equipment to provide Communication Services to its customers, which requires the submission of a request for approval in the form attached hereto as Exhibit "A" (the "Approval Form"), and which shall be subject to the terms and conditions of this Agreement.

**2. TERM.**

**2.1** The initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the first day of the month following mutual execution of this Agreement and ending on the tenth anniversary thereof, unless sooner terminated as stated herein. Provided LICENSEE is not in default of any of its obligations under this Agreement, this Agreement shall be automatically renewed for two (2) successive five (5) year renewal terms (each, a "Renewal Term"), unless at least one hundred eighty (180) days prior to the expiration of the Initial Term or the first Renewal Term, as applicable, either County or LICENSEE notifies the other party in writing of such party's intent not to renew this Agreement. The Initial Term and any exercised Renewal Terms shall be collectively referred to herein as the "Term." However, should the Term of this Agreement expire prior to any Subsequent Cell Site Term, the terms and conditions of this Agreement shall survive and govern with respect to any Subsequent Cell Site in effect until its expiration as provided in Subsection 2.2 below.

**2.2.** The initial term for each particular Subsequent Cell Site shall be the first day of the month following the full execution of the Approval Form (the "Commencement Date") and shall be for an initial term of ten (10) years ("Subsequent Cell Site Initial Term"). The term for each Subsequent Cell Site shall automatically be extended for two (2) successive five (5) year renewal terms (each, a "Subsequent Cell Site Renewal Term") unless LICENSEE notifies the County in writing of LICENSEE's intent not to renew for the Subsequent Cell Site Renewal Term at least thirty (30) days prior to the expiration of the then current term. The Subsequent Cell Site Initial Term and all exercised Subsequent Cell Site Renewal Terms shall be collectively referred to herein as the "Subsequent Cell Site Term." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions, or the terms and conditions of any revised or renewed Agreement, shall survive and govern with respect to any remaining Subsequent Cell Site until their expiration or termination.

**3. REPRESENTATION CONCERNING SERVICES; TERMINATION WITHOUT CAUSE.** LICENSEE acknowledges that its rights to use the ROW under this Agreement arise out of its status under Title 47 of the United States Code as a provider of Communication Services, and LICENSEE represents that it will at all times remain a provider of Communication Services as so defined. At any time that LICENSEE ceases to operate as a provider of Communication Services under Federal law, the County shall have the option, in its sole discretion and upon six (6) months' written notice to LICENSEE, to terminate

this Agreement and to require the removal of LICENSEE's Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the County, without any liability to LICENSEE related directly or indirectly to such termination.

**4. SCOPE OF AGREEMENT.** Any and all rights expressly granted to LICENSEE under this Agreement, which shall be exercised at LICENSEE's sole cost and expense, shall be subject to the prior and continuing right of the County under applicable Laws to use any and all parts of the ROW exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW as of the date of the installation of any Subsequent Cell Site.

**4.1 Attachment to Municipal Facilities.** LICENSEE will submit to the authorized representative of the County on the Approval Form a proposed design for any proposed Small Cell installations that will include Equipment and Municipal Facilities LICENSEE proposes to use. The County shall have a right to review and approve of any such Equipment, which shall not be unreasonably withheld, conditioned or delayed. Any approved Equipment shall be included as part of an applicable Subsequent Cell Site.

**4.1.1** If adequate Municipal Facilities do not exist for the attachment of Equipment, LICENSEE will be required to install its Equipment on other poles in the ROW lawfully owned and operated by third parties or on its own poles.

**4.1.2** LICENSEE shall not attach its Equipment to more than a total of twenty-five (25) streetlight poles in the ROW within one square mile, regardless of whether such streetlight poles are owned by the County or LICENSEE, unless approved by the Director of Public Works, who may approve up to an additional ten (10) poles within the same square mile. LICENSEE acknowledges and agrees that it is the Director of Public Works preference that when reasonably avoidable, no two carriers install antennas on poles which are on the same side of the street and adjacent to each other, and in such situations it is preferable that Licensee, or such other subsequent carrier, install its own pole.

**4.1.3** Subject to the conditions herein, and approval of the Equipment shown in the Approval Form by Public Works, the County hereby authorizes and permits LICENSEE to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on identified Municipal Facilities for the purposes of operating the Network and providing Services.

**4.1.4** To reduce the disruption to Municipal Facilities, LICENSEE may power its Equipment by using the power sources that service the existing



Streetlight Pole structure and its components. The power used by LICENSEE's Equipment shall be determined by the plate rating for the Equipment installed pursuant to this Agreement. All electrical work and installations related to the power sharing authorized by this Subsection 4.1.4 shall be performed by a licensed contractor that is approved by the County and in a manner that is approved by the County. LICENSEE shall make all requests for power sharing arrangements pursuant to this Subsection 4.1.4 in advance and in writing. LICENSEE shall reimburse the County, as provided in Subsection 5.2, for the increased power costs that the County incurs as a result of any power sharing authorized by this Subsection 4.1.4.

**4.1.5** If LICENSEE selects a Municipal Facility that is structurally inadequate to accommodate Equipment, LICENSEE may at its sole cost and expense replace the Municipal Facility with one that is acceptable to and approved by the County (which acceptance and approval shall not be unreasonably withheld, conditioned or delayed) and dedicate such Municipal Facility to the County.

**4.1.6** LICENSEE may apply to the County to expand its initial Network installation through the same process as specified in this Subsection 4.1;

**4.1.7** In the event of an emergency or to protect the public health or safety, prior to the County accessing or performing any work on a Municipal Facility on which LICENSEE has installed Equipment, the County may require LICENSEE to deactivate such Equipment if any of County's employees or agents must move closer to the Equipment than the recommended one foot minimum distance. In such case, County will contact LICENSEE at the contact telephone number referenced in Subsection 14.3 herein to request immediate deactivation. If LICENSEE fails to respond in a timely manner, and the nature of the emergency is such that immediate work is necessary in order to prevent damage to property or injury to persons, County may deactivate said Equipment to perform any necessary work with no liability to County.

**4.2 Attachment to Third-Party Property.** Subject to obtaining the written permission of the owner(s) of the affected property, and approval of the Equipment shown in the Approval Form by Public Works, the County hereby authorizes and permits LICENSEE to enter the ROW to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures lawfully owned and operated by public utility companies or other property owners located within or outside the ROW as may be permitted by the public utility company or property owner, as the case may be. LICENSEE shall furnish to the County documentation in a form acceptable to the County of such permission from the individual utility or property owner responsible.



**4.3 Preference for Municipal Facilities.** In any situation where LICENSEE has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the ROW, LICENSEE shall use good faith efforts to attach to the Municipal Facilities, provided that (a) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (b) the use fee, construction and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to LICENSEE of attaching to the alternative third-party-owned property. In the event that no suitable Municipal Facilities or third-party-owned poles are functionally suitable, LICENSEE may, at its sole cost and expense, install its own poles. Design, location and height of proposed LICENSEE poles shall be reviewed and subject to administrative approval by the County prior to installation. LICENSEE's Equipment and poles must conform as closely as practicable with the design and color of poles existing in the vicinity of LICENSEE's Equipment or pole location. Subject to the terms and conditions of this Agreement, LICENSEE will be responsible for all maintenance, repair and liability for all poles installed by LICENSEE in the ROW.

**4.4 No Interference.** LICENSEE in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, electroliners, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. The County agrees to include in any agreement that the County may approve subsequent to the Effective Date of this Agreement concerning the use of the County's rights-of-way, language that is consistent with the provisions of this Subsection.

**4.5 Permits; Default.** Whenever LICENSEE is in default of this Agreement, after notice and applicable cure periods, in any of its obligations under this Agreement, the County may deny further encroachment, excavation or similar permits until such time as LICENSEE cures all of its defaults.

**4.6 Compliance with Laws.** LICENSEE shall comply with all applicable laws in the exercise and performance of its rights and obligations under this Agreement.

**4.7 No Authorization to Provide Other Services.** LICENSEE represents, warrants and covenants that its Equipment installed pursuant to this Agreement will be utilized solely for providing the Communication Services identified herein, and LICENSEE is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein.

**4.8 Nonexclusive Use Rights.** Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the County to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the term of this Agreement, including, without limitation any Encumbrances granted, created or allowed by the County at any time.

**5. COMPENSATION.** LICENSEE shall be solely responsible for the payment of all lawful fees in connection with LICENSEE's performance under this Agreement, including those set forth below.

**5.1 Rent.** In order to compensate the County for LICENSEE's entry upon and deployment of Equipment within the ROW or on any Municipal Facilities, LICENSEE shall pay to the County, on an annual basis, a business license fee in the amount of Seven Hundred and 00/100 Dollars (\$700.00) per Streetlight Pole (the "Rent"), subject to the Rent adjustment in Section 5.3. LICENSEE shall make any payment of Rent that may be initially due and owing within forty-five (45) days after the Commencement Date of each applicable Subsequent Cell Site. The initial Rent payment for each Subsequent Small Cell shall be prorated for each month or portion thereof from the Commencement Date to the next June 30<sup>th</sup>, and subsequent Rent payments (after the initial payment) shall be paid annually on or before July 1<sup>st</sup> of each year through the applicable Subsequent Cell Site Term.

**5.2 Reimbursement of County's Increased Power Costs.** Reimbursement to the County for LICENSEE's usage of electrical power shall be based upon the plate rating of the Equipment installed pursuant to this Agreement and the initial rates shall be as follows:

<u>Category</u>	<u>Maximum Plate Rating (Watts)</u>	<u>Monthly Rate Per Pole</u>	<u>Annual Rate Per Pole</u>
1	Up to 75	\$4.00	\$48.00
2	76 – 149	\$8.00	\$96.00
3	150 – 225	\$12.00	\$144.00

The reimbursement of power shall be paid to the County on an annual basis and shall be prorated for the initial period and calculated for subsequent periods in the same manner as Rent is determined in Subsection 5.1 above, for each Subsequent Small Cell that uses electrical power from the County based on the applicable rate as indicated in this Section. The applicable rates charged by this subsection, as the same may be adjusted in the following sentence, shall not exceed the Wireless

Communication Service rates as filed with the PUCN by Nevada Power Company, or its successor. The County may increase the power fee charged by this subsection if the applicable rate for Wireless Communication Service as filed with the PUCN is greater than the rate provided for in this subsection by 25% or more. Any such change in rates shall take effect on July 1 of each year.

**5.3 Rent Adjustment.** Effective on July 1, 2016 and continuing annually thereafter during the Term, the annual Rent amount, as specified in Subsection 5.1, and as adjusted annually by this Subsection 5.3, shall be increased by an amount equal to two and half percent (2.5%) of the annual Rent for the immediately preceding year.

**5.4 Business License Fee.** The Rent in Subsection 5.1 of this Section includes any business license fee pursuant to the applicable business licensing provisions of Clark County Code Title 6.

**5.5 Payment.** The Rent and Power Cost Fee shall be paid by check made payable to the Department of Business License and mailed or delivered to the Director of Business License, at the address provided for in Section 10 below. The place and time of payment may be changed at any time by County upon thirty (30) days' written notice to LICENSEE. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt by the County's Director of Business License. LICENSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

Notwithstanding the foregoing, upon agreement of the parties, LICENSEE may pay rent and other applicable fees or penalties by electronic funds transfer and in such event, the County agrees to provide to LICENSEE bank routing information for such purpose or such other information necessary to electronically transfer funds to the County upon request of LICENSEE.

**5.6 Delinquent Payment.** If LICENSEE fails to pay any amounts due pursuant to this Agreement within 45 days from the due date, LICENSEE will pay, in addition to the unpaid fees, a sum of money equal to two percent of the amount due for each month and/or fraction thereof during which the payment is due and unpaid.

**5.7 Additional Remedies.** The remedy provisions set forth in Subsection 5.6 above are not exclusive, and do not preclude the County Manager or designee from pursuing any other or additional remedy in the event that payments become overdue by more than 60 days.

**6. CONSTRUCTION.** LICENSEE shall comply with all applicable federal, State, and County technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of LICENSEE's Equipment installed in the ROW and on Municipal Facilities in the County.

Except as otherwise provided herein, LICENSEE shall not attach, install, maintain, or operate any Equipment in or on the ROW and/or on Municipal Facilities without the prior written approval of an authorized representative of the County for each location, which approval shall not be unreasonably withheld or delayed.

**6.1 Commencement of Installation and Operation.** LICENSEE shall Commence Installation of its initial Small Cell approved by the County no later than one (1) year after the mutual execution of an applicable Approval Form for a Subsequent Cell Site, and shall Commence Operation no later than thirty (30) days after LICENSEE completes its installation of its Small Cell, which such dates shall be delayed due to any force majeure event or County caused delay. Failure to Commence Operation of the applicable Small Cell as provided above shall permit County to terminate the affected Subsequent Cell Site upon thirty (30) days notice to LICENSEE unless within such thirty (30) day period LICENSEE shall Commence Operation. Upon approval of any expansion of LICENSEE's Small Cell pursuant to Section 4 above, LICENSEE shall endeavor to Commence Installation of the approved expansion of its Small Cell no later than six (6) months after the approval date of such expansion by County and to Commence Operation of the expansion no later than three (3) months after LICENSEE Commences Installation, which such dates shall be delayed due to any force majeure event or County caused delay. Notwithstanding the foregoing, LICENSEE's obligations under this Subsection 6.1 shall be conditioned upon LICENSEE's completion of its due diligence with regard to a particular Small Cell.

**6.2 Obtaining Required Permits.** The attachment, installation, or location of the Equipment in the ROW shall require permits from the County. LICENSEE shall apply for the appropriate permits and pay any standard and customary permit fees. County shall promptly respond to LICENSEE's requests for permits and shall otherwise cooperate with LICENSEE in facilitating the deployment of the Network in the ROW in a reasonable and timely manner. Permit conditions may include, without limitation, (a) approval by the County of traffic control plans prepared by LICENSEE for LICENSEE's work in County ROW, (b) approval by the Nevada Department of Transportation (NDOT) of traffic control plans prepared by LICENSEE for LICENSEE's work within ROW controlled by NDOT, and (c) adherence to time restrictions for work in streets as specified by the County and/or NDOT.

**6.3 Zoning Height Restrictions.** Notwithstanding anything to the contrary in this Agreement, no portion of LICENSEE's Equipment shall extend higher than 24 inches above the height of any existing structure. In the case of a new installation by LICENSEE, the overall height of LICENSEE's pole and equipment shall not exceed 35 feet above grade unless otherwise approved by the County.

**6.4 Street Furniture Cabinets.** LICENSEE understands that above-ground street furniture and equipment cabinets located in the ROW are discouraged and generally prohibited as a matter of County policy and that any such installation of

above-ground street furniture or equipment cabinets will be required to be placed in an easement on private property adjacent the ROW, and will require additional approvals and/or permitting under applicable ordinances. Notwithstanding anything in the foregoing, the installation of Equipment mounted on a Streetlight Pole and below-ground vaults shall be allowed within the ROW pursuant to applicable provisions of Title 30 of the Clark County Code and provided that LICENSEE will be responsible for all costs associated with such Equipment and below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities. LICENSEE agrees to comply with the County's current ordinances regarding such installations as well as any future regulations that may be lawfully adopted by the County respecting such installations. In no instance shall the installation of any of LICENSEE's Equipment or any appurtenant structures block pedestrian walkways in ROW or result in violation of the Americans with Disabilities Act, or obstruct sight visibility as defined by County ordinance or Regional Transportation Commission of Southern Nevada standard drawings.

**6.5 Visual Impact of Cross-Arm Installations.** LICENSEE agrees that, in order to minimize the visual impact of its attachments on utility poles, in any instance where a cross-arm is set on a utility pole as the locus for attachment of Equipment, LICENSEE shall use its best efforts to work with the applicable third parties to ensure that such Equipment shall be attached at the point on the cross-arm that is acceptable to the County. If, however, the third party does not accommodate the County's request, LICENSEE shall be allowed to attach in whatever fashion is required by the third party.

**6.6 Relocation and Displacement of Equipment.** LICENSEE understands and acknowledges that County may require LICENSEE to relocate one or more of its Equipment installations. LICENSEE shall at County's direction and upon one hundred eighty (180) days prior written notice to LICENSEE, relocate such Equipment at LICENSEE's sole cost and expense whenever County reasonably determines that the relocation is for the construction, modification, completion, repair, relocation, or maintenance of a County or other public agency project. LICENSEE shall at County's direction and upon thirty (30) days prior written notice (or sooner, in a time frame that is reasonably, in the event of an emergency) to LICENSEE, relocate such Equipment at LICENSEE's sole cost and expense whenever County reasonably determines that the relocation is needed for any of the following purposes: (a) because the Equipment is interfering with or adversely affecting proper operation of County-owned Streetlight Poles, traffic signals, communications, or other Municipal Facilities; or (b) to protect or preserve the public health or safety. In any such case, County shall use reasonable efforts to afford LICENSEE a reasonably equivalent alternate location. If LICENSEE shall fail to relocate any Equipment as requested by the County within a reasonable time under the circumstances in accordance with the foregoing provision, County shall be entitled to remove or relocate the Equipment at LICENSEE's sole cost and expense, without further notice to LICENSEE. LICENSEE shall pay to the County



actual costs and expenses incurred by the County in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the County. To the extent the County has actual knowledge thereof, the County will attempt promptly to inform LICENSEE of the displacement or removal of any Streetlight Pole on which any Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the County will have no obligation to repair or replace such Municipal Facility for the use of LICENSEE's Equipment. LICENSEE shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 6.11 below, and may choose to replace such Municipal Facilities pursuant to the provisions of Subsection 4.1.5 above.

**6.7 Relocations at LICENSEE's Request.** In the event LICENSEE desires to relocate any Equipment from one Municipal Facility to another, LICENSEE shall so advise County. County will use reasonable efforts to accommodate LICENSEE by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

**6.8 Damages Caused by LICENSEE.** LICENSEE shall, at its sole cost and expense and to the satisfaction of the County: (a) remove, repair or replace any of its Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, Municipal Facilities or other property, whether public or private, caused by LICENSEE, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Equipment. If LICENSEE does not remove, repair or replace such damage to its Equipment or to ROW, Municipal Facilities or other property, the County shall have the option, upon thirty (30) days' prior written notice to LICENSEE, to perform or cause to be performed such removal, repair, or replacement on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the County. If such damage causes a public health or safety emergency, as reasonably determined by the County, the County may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work may only involve reattachment of LICENSEE's Equipment to a Streetlight Pole or repair of the Streetlight Pole itself, and shall not include any technical work on LICENSEE's Equipment. Upon the receipt of a demand for payment by the County, LICENSEE shall within thirty (30) days of such receipt reimburse the County for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

**6.9 Change in Equipment.** If LICENSEE proposes to install Equipment which is different in any material way from the then-existing and approved Equipment, then LICENSEE shall first obtain the written approval for the use and installation of the unauthorized Equipment from an authorized representative of the County, which approval shall not be unreasonably withheld, conditioned or delayed. In addition to any other submittal requirements, LICENSEE shall provide "load"

(structural) calculations for all Streetlight Poles it intends to install in the ROW, notwithstanding original installation or by way of Equipment type changes. County may reasonably approve or disapprove the use of different Equipment than that set forth in the Approval Form. Notwithstanding the foregoing, LICENSEE may modify its Equipment with like-kind or similar Equipment provided the same is comparable in weight and dimensions, and approved by Public Works in conjunction with the filing of an encroachment permit.

**6.10 Removal of Equipment.** Within sixty (60) days after the expiration or earlier termination of a Subsequent Cell Site, LICENSEE shall promptly, safely and carefully remove the Equipment from the applicable Municipal Facilities and ROW. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work pursuant to this Section, then the County, upon written notice to LICENSEE, shall have the right at the County's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the County actual costs and expenses incurred by the County in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the County. After the County receives the reimbursement payment from LICENSEE for the removal work performed by the County, the County shall promptly make available to LICENSEE the property belonging to LICENSEE and removed by the County pursuant to this Section at no liability to the County. If the County does not receive reimbursement payment from LICENSEE within such thirty (30) days, or if County does not elect to remove such items at the County's cost after LICENSEE's failure to so remove pursuant to this Section, or if LICENSEE does not remove LICENSEE's property within thirty (30) days of such property having been made available by the County after LICENSEE's payment of removal reimbursement as described above, any items of LICENSEE's property remaining on or about the ROW, Municipal Facilities, or stored by the County after the County's removal thereof may, at the County's option, be deemed abandoned and the County may dispose of such property in any manner by Law. Alternatively, the County may elect to take title to abandoned property, provided that LICENSEE shall submit to the County an instrument satisfactory to the County transferring to the County the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

**6.11 Risk of Loss.** LICENSEE acknowledges and agrees that LICENSEE, subject to the terms of this Agreement bears all risks of loss or damage or relocation or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and the County shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the County's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the County, including, without limitation, each of its

elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Subsection 7.2 below.

**6.12 Access.** Prior to LICENSEE accessing its Equipment for non-emergency purposes, LICENSEE shall provide telephonic notice to the Public Works Department. In the event of an emergency (i.e. an actual Equipment outage is occurring), LICENSEE will, if time permits, attempt to provide prior telephonic notice to the Public Works Department. In the event LICENSEE is unable to provide such notice, LICENSEE will notify the Public Works Department within two (2) business days following such access.

**6.13 Termination of a Supplement.** LICENSEE shall have the right to terminate any Subsequent Cell Site on thirty (30) days notice to County. In the event of such termination, LICENSEE shall remove its Equipment from such Subsequent Cell Site in accordance with §6.10 above and County shall retain any Rent paid to such date.

**7. INDEMNIFICATION AND WAIVER.** LICENSEE agrees to indemnify, defend, protect, and hold harmless the County, its commission members, officers, and employees from and against any and all claims, demands, losses, including Streetlight Pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from LICENSEE's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the County, its County Commission members, officers, employees, agents, or contractors.

**7.1 Waiver of Claims.** LICENSEE waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Communication Services as a result of any event or occurrence which is beyond the reasonable control of the County.

**7.2 Limitation of County's Liability.** County shall be liable for all costs related to damage to the Equipment arising from the negligence or willful misconduct of County, its employees, agents or contractors, including any third party under the direction of County. County's liability under this Agreement shall be limited to the reasonable provable damages caused to the Equipment, and all other direct or foreseeable damages directly arising from County's negligence or willful misconduct. If damages to the Small Cell or ROW results from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, through no fault of County, its employees, agents or contractors, then LICENSEE shall be responsible for all damages resulting from such to the extent due to LICENSEE's use of the Small Cell or ROW, including damage to the ROW. County is not responsible for maintaining any separate policy for fire coverage



related to LICENSEE's use of its Equipment in the ROW. LICENSEE shall be responsible for all costs related to damage to the Equipment arising from the negligence or willful misconduct of LICENSEE, its employees, agents, or contractors, including any third parties under the direction LICENSEE. LICENSEE shall be liable for all other direct or foreseeable damages arising from LICENSEE's negligence or willful misconduct.

**7.3 Waiver of Subrogation.** The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Small Cell or to the ROW, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by either party concerning the Small Cell or the ROW shall waive the insurer's right of subrogation against the other party.

**7.3 Limitation on Consequential Damages.** Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise

**8. SECURITY FOR PERFORMANCE.** As security for compliance with the terms of this Agreement and applicable County Code provisions, LICENSEE shall, no later than 10 days after the issuance of the first approval by the County to install a Small Cell, and prior to any use of the ROW for purposes under this Agreement, provide security to the County in the form of either cash deposited with the County, or an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond, payable in each instance to the County, in an amount of \$50,000 to remain in full force and effect until the later of (i) the expiration or earlier termination of the Term of this Agreement and (ii) the expiration or earlier termination of the last Subsequent Cell Site Term, any or all of which may be claimed by the County as payment for fees, damages and penalties, in accordance with this Agreement, and to recover losses resulting to the County from LICENSEE's failure to perform. If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

(a) All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.

(b) All bonds shall be issued by a surety company authorized to do business in the State of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision): companies holding

certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.

(c) LICENSEE shall require the attorney-in-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

(d) All bonds prepared by a licensed nonresident agent must be countersigned by a resident agent per NRS 680A.300.

(e) All bonds shall guarantee the performance of all of LICENSEE's obligations under this Agreement and all applicable laws.

(f) All bonds shall be substantially in the same form as that contained in **Exhibit B** attached hereto or as otherwise approved by the County.

If at any time the County draws upon such performance security, LICENSEE shall within 30 days of notice from the County replenish such performance security to the original minimum amount required by this Section 8.

**9. INSURANCE.** LICENSEE shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting LICENSEE in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the County, its commission members, officers, and employees as additional insureds as respects any covered liability arising out of LICENSEE's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Upon receipt of notice from its insurer, Licensee shall use its best efforts to provide the County with thirty (30) days prior written notice of cancellation. LICENSEE shall be responsible for notifying the County of such change or cancellation.

**9.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Agreement, LICENSEE shall file with the County the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that the County shall receive 30 days' prior notice of cancellation;

(c) that LICENSEE's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have; and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(d) that LICENSEE's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the County.

The certificate(s) of insurance with endorsements and notices shall be mailed to the County at the address specified in Section 10 below.

**9.2 Workers' Compensation Insurance.** LICENSEE shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the County with a certificate showing proof of such coverage.

**9.3 Insurer Criteria.** Any insurance provider of LICENSEE shall be admitted and authorized to do business in the State of Nevada and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A-" Overall and a Financial Size Category of "X". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**9.4 Severability of Interest.** "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

## **10. NOTICES.**

**10.1 Method and Delivery of Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

*if to the County:*  
CLARK COUNTY  
Attn: Director of Business License  
500 S. Grand Central Pkwy, 3<sup>rd</sup> Floor  
Box 551810  
Las Vegas, NV 89155-1810

*if to LICENSEE:*

Southwest Wireless LP  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

**10.2 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

## **11. DEFAULT; CURE; REMEDIES.**

**11.1 Licensee Default and Notification.** This Agreement is granted upon each and every condition herein and each of the conditions is a material and essential condition to the granting of this Agreement. Except for causes beyond the reasonable control of LICENSEE, if LICENSEE fails to comply with any of the conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the County to commence the correction of such noncompliance on the part of LICENSEE, the County shall have the right to revoke and terminate this Agreement, if such failure is in relation to the Agreement as whole, or any individual Small Cell, if such failure is in connection solely with such Subsequent Cell Site, in addition to any other rights or remedies set forth in this Agreement or provided by law.

**11.2 Cure Period.** If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under LICENSEE's control, the period of time in which LICENSEE must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) LICENSEE has promptly begun to cure; and (b) LICENSEE is diligently pursuing its efforts to cure. The County may not maintain any action or effect any remedies for default against LICENSEE unless and until LICENSEE has failed to cure the breach within the time periods provided in these Subsections 11.1 and 11.2.

**11.3 County Default.** If County breaches any covenant or obligation of County under this Agreement in any manner and if County fails to commence to cure such breach within thirty (30) days after receiving written notice from LICENSEE specifying the violation (or if County fails thereafter to diligently prosecute the cure to completion), then LICENSEE may enforce any and all of its rights and/or remedies provided under this Agreement or by law or it may (although it shall not be obligated to) cure County's breach and/or perform County's obligations (on County's behalf and at County's expense) and require County to reimburse to LICENSEE all reasonable costs and expenses (including reasonable attorneys'

fees) incurred in connection with such cure and/or performance (which amount may be deducted from Rent payable under this Agreement).

**12. ASSIGNMENT.** This Agreement shall not be Assigned by LICENSEE without the express written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of LICENSEE to an Affiliate or to any successor in interest or entity acquiring 51 percent or more of LICENSEE's stock or assets (collectively "Exempted Transfers") shall not require the consent of the County.

**13. RECORDS; AUDITS.**

**13.1 Records Required by Code.** LICENSEE will maintain complete records pursuant to the applicable provisions of Title 6 of the Clark County Code.

**13.2 Additional Records.** The County may require such applicable additional reasonable non-confidential information, records, and documents from LICENSEE from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement. Additionally, the County may require LICENSEE to collect reasonable supplementary information as needed.

**13.3 Production of Records.** LICENSEE shall provide such records within twenty (20) business days of a request by the County for production of the same unless additional time is reasonably needed by LICENSEE, in which case, LICENSEE shall have such reasonable time as needed for the production of the same. Such records shall be made available in Clark County. If any person other than LICENSEE maintains records on LICENSEE's behalf, LICENSEE shall be responsible for making such records available to the County for auditing purposes pursuant to this Section.

**14. MISCELLANEOUS PROVISIONS.** The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

**14.1 Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

**14.2 Severability of Provisions.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.



**14.3 Contacting LICENSEE.** LICENSEE shall be available to the staff employees of any County department having jurisdiction over LICENSEE's activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The County may contact by telephone the network control center operator at telephone number: 800-264-6620, regarding such problems or complaints.

**14.4 Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Nevada, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Nevada.

**14.5 Attorneys' Fees.** Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

**14.6 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**14.7 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Subsection 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

**14.8 Amendment of Agreement.** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

**14.9 Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

**14.10 Public Records.** LICENSEE acknowledges that information submitted to the County is open to public inspection and copying under Nevada Public Record Law, Chapter 239 of the Nevada Revised Statutes. LICENSEE is responsible for becoming familiar and understanding the provisions of the Nevada Public Records Law. LICENSEE may identify information, such as trade secrets, proprietary

financial records, customer information or technical information, submitted to the County as confidential. LICENSEE shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information prior to submitting such information to the County. The County shall treat any information so marked as confidential until the County receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the County shall provide LICENSEE with written notice of the request, including a copy of the request. LICENSEE shall have five (5) working days within which to provide a written response to the County, before the County will disclose any of the requested confidential information. The County retains the final discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

**14.11 Non-Exclusive Remedies.** No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

**14.12 No Third-Party Beneficiaries.** It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the County with respect to third parties shall remain as imposed by Nevada law.

**14.13 Construction of Agreement.** The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

**14.14 Effect of Acceptance.** LICENSEE (a) accepts and agrees to comply with this Agreement and all applicable federal, state and local laws and regulations; (b) agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the County that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the County had no power or authority to make or enforce any such provision, condition or term.

**14.15 Time is of the Essence.** Time is of the essence with regard to the performance of all of LICENSEE's obligations under this Agreement.

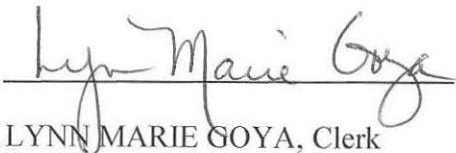
IN WITNESS THEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this 1st day of December, 2015.

**CLARK COUNTY BOARD OF COMMISSIONERS**

By: \_\_\_\_\_

STEVE SISOLAK, Chairman

ATTEST:

  
LYNN MARIE GOYA, Clerk

APPROVED AS TO FORM  
DISTRICT ATTORNEY'S OFFICE



BY: ROBERT GOWER  
Deputy District Attorney

**SOUTHWESTCO WIRELESS, LP**  
D/B/A VERIZON WIRELESS,  
by Southwestco Wireless, Inc.,  
its Managing Partner

BY: \_\_\_\_\_

Phillip French  
Executive Director - Network

**Exhibits:**

- Exhibit A – Approval Form for Subsequent Cell Site
- Exhibit B – Form of Bond



## EXHIBIT A

### APPROVAL FORM FOR SUBSEQUENT CELL SITE

Southwest Wireless LP, d/b/a Verizon Wireless (hereinafter "Licensee") hereby requests consent from the County of Clark, a political subdivision of the State of Nevada (hereinafter designated "County") to install certain Equipment within the ROW in order to operate a Small Cell pursuant to that certain Wireless Use License Agreement between County and Licensee dated \_\_\_\_\_, 2015 ("Agreement").

1. Subsequent Cell Site. Upon approval of this request by both Licensee and County, all of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. Capitalized terms used in this Subsequent Cell Site shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensee hereby requests use of the ROW for a Small Cell at the designated area in the ROW as further described in Attachment 1 attached hereto (the "Licensed Area") and shall include a description of the location of the Small Cell, including the GPS coordinates (i.e., Lat/Long).

3. Equipment. The Small Cell to be installed at the Licensed Area is described in Attachment 1 attached hereto. In the event Licensee powers its Equipment by using the power sources that service the existing Streetlight Pole structure and its components, the rates charged by Licensor for such electricity shall be as provided in the Agreement.

4. Term. The term for the Subsequent Cell Site shall be as set forth in Subsection 2.2 of the Agreement.

5. Fees. The License Fees for the Subsequent Cell Site shall be as stated in Subsection 5.1 of the Agreement, as adjusted by Subsection 5.3.

6. Commencement Date. The Commencement Date shall be the first day of the month following the execution of this Approval Form.

7. Number of Originals. Three (3) originals of this Approval Form shall be executed by Licensee and County, with one (1) original retained by Licensee, one (1) original retained by the Department of Business License, and one (1) original retained by the Department of Public Works.

[Signature page follows]

EXECUTED to be effective as of the last date shown below.

**SOUTHWESTCO WIRELESS, LP**  
D/B/A VERIZON WIRELESS,  
by Southwestco Wireless, Inc.,  
its Managing Partner

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

COUNTY hereby approves the Small Cell to be installed at the Licensed Area as described in Attachment 1.

**CLARK COUNTY**  
**DEPARTMENT OF PUBLIC WORKS**

By: \_\_\_\_\_

DATE: \_\_\_\_\_

**Exhibits:**  
Attachment 1

Attachment 1

[Form Attached]



# Wireless Cell Site Approval

Applicant to Fill out:

Location: (Check one)

☐ New Pole

Northing \_\_\_\_\_

Easting \_\_\_\_\_

☐ Existing Pole

Northing \_\_\_\_\_

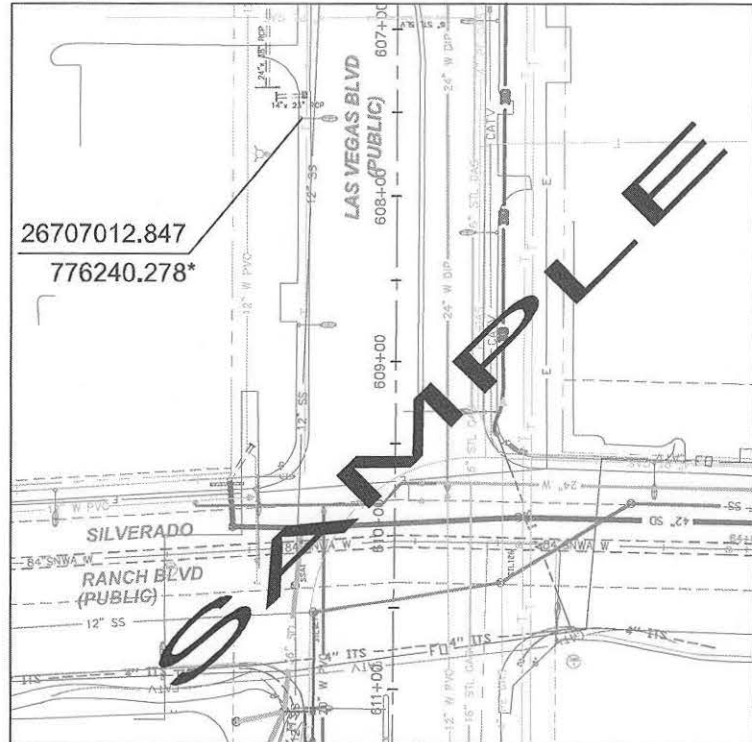
Easting \_\_\_\_\_

\*Provide Coordinates in  
Northing/Easting, NAD  
1983, State Plane Nevada  
East, US Survey Feet.

Power Source: (Check one)

☐ Clark County Owned Service

☐ Customer Owner Service



Clark County Department of Public Works - Traffic Management to Fill out:

Service Location				
Existing Meter #				
Ex Service Size	100 amp	125 amp	200 amp	
Street light circuit	60 amp (ckt1)			
Service Type	Pedestal		Pole Mounted	
Current Application	Traffic Signal	Street Lighting	Both	
Existing Load	amps		Amps	amps
Field tested by			Date	
Additional Notes:				

## CLARK COUNTY DEPARTMENT OF PUBLIC WORKS TRAFFIC MANAGEMENT

Location Approval

By \_\_\_\_\_ Date \_\_\_\_\_

Acceptance of Plans for Filing

By \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT B

FORM OF SURETY BOND

Bond Number: \_\_\_\_\_

**Surety Bond**

**Know all men by these presents:**

That \_\_\_\_\_ as Principal, and \_\_\_\_\_, incorporated under the laws of the State of \_\_\_\_\_, and authorized to execute bonds and undertakings as sole Surety, are held and firmly bound unto \_\_\_\_\_, as Obligee, in the sum of \_\_\_\_\_; for the payment thereof, well truly to be made, said Principal and Surety bind themselves, their administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

**Whereas**, the above bounden Principal is about to enter into a certain agreement with the Obligee for the following: \_\_\_\_\_, the execution and delivery of which said agreement was made to the Principal by the Obligee on \_\_\_\_\_.

**Now, therefore**, if the Principal shall well, truly, and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and provisions of said agreement during the original term thereof and any extensions thereof which may be granted by the Obligee, with or without notice to the Surety, and if it shall satisfy all claims and demands incurred under such agreement and shall fully indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so and shall reimburse and repay the Obligee all outlay and expenses which the Obligee may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

**Provided, further**, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or to the work to be performed thereunder or the specifications

accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the agreement or to the work or to the specifications.

**Provided, however,** this bond is issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under § \_\_\_\_\_, after which all liability ceases, except as to any liability incurred or accrued prior to the date of such cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.
3. The surety reserves the right to withdraw as surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the Obligees not less than sixty (60) days' written notice.

**Signed and sealed** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**Principal:**

**Surety:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

## **EXHIBIT J**

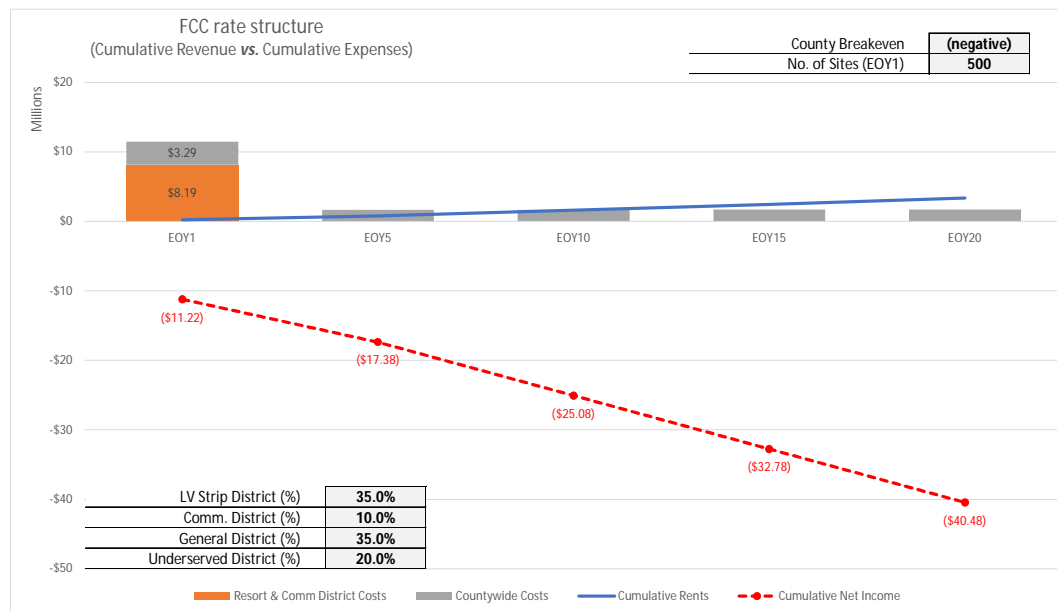
## FCC Rate (500 sites)

### Revenues (EOY1)

Recurring Revenue	Unit \$	# of Units	Total \$ (EOY1)
Small Cell Rents (sites per district - EOY1)			
LV Strip District (175 sites)	\$270	175	\$47,250
Comm District (50 sites)	\$270	50	\$13,500
General District (175 sites)	\$270	175	\$47,250
Underserved District (100 sites)	\$270	100	\$27,000
+ annual inspections (500 sites)	\$0	500	\$0
<b>subtotals:</b>		500	\$135,000
	\$270 /yr		
Non-Recurring Revenue (per site)			
Site Application Fees	\$250	500	\$125,000
County cost reimbursements	\$0	500	\$0
Prog. Mgmt. reimbursements	\$0	500	\$0
<b>subtotals:</b>	\$250	500	\$125,000
<b>Revenue Totals (EOY1):</b>			\$260,000

### Expenses (EOY1)

Capital Costs (per district - EOY1)	Unit \$	# of Units	Total \$ (EOY1)
Turn-key installation	\$46,810	175	\$8,191,680
<b>subtotals:</b>			\$8,191,680
Programmatic Costs (/site)			
Program Management Costs	\$4,680	500	\$2,340,000
Operational Costs	\$1,292	500	\$645,810
<b>subtotals:</b>			\$2,985,810
<b>Expense Totals (EOY1):</b>			\$11,177,490



Cumulative Totals	EOY1	EOY5	EOY10	EOY15	EOY20
Rents & Reimbursements	\$260,000	\$827,545	\$1,603,212	\$2,459,611	\$3,405,145
Countywide Costs	\$3,285,810	\$10,015,044	\$18,490,149	\$27,044,592	\$35,688,928
Capital Costs	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680
Net Income	(\$11,217,490)	(\$17,379,178)	(\$25,078,617)	(\$32,776,660)	(\$40,475,464)



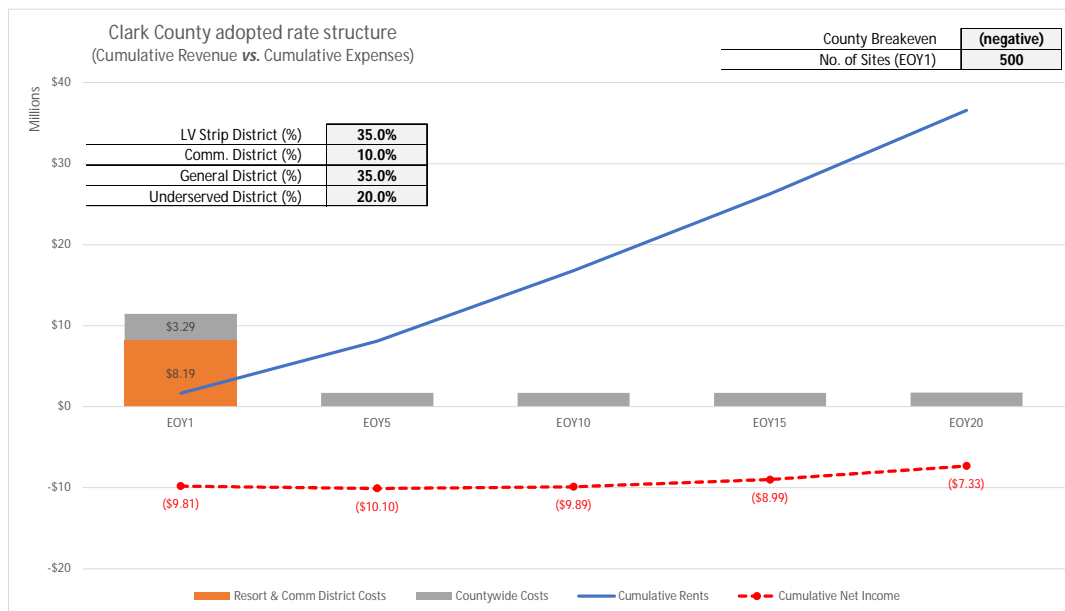
## Clark County Adopted Rates (500 sites)

### Revenues (EOY1)

<b>Recurring Revenue</b>	<b>Unit \$</b>	<b># of Units</b>	<b>Total \$ (EOY1)</b>
Small Cell Rents (sites per district - EOY1)			
LV Strip District (175 sites)	\$3,960	175	\$693,000
Comm District (50 sites)	\$3,960	50	\$198,000
General District (175 sites)	\$1,900	175	\$332,500
Underserved District (100 sites)	\$700	100	\$70,000
+ annual inspections (500 sites)	\$500	500	\$250,000
<b>subtotals:</b>		500	\$1,543,500
<b>Non-Recurring Revenue (per site)</b>			
Site Application Fees	\$250	500	\$125,000
County cost reimbursements	\$0	500	\$0
Prog. Mgmt. reimbursements	\$0	500	\$0
<b>subtotals:</b>	\$250	500	\$125,000
<b>Revenue Totals (EOY1):</b>			\$1,668,500

### Expenses (EOY1)

<b>Capital Costs (per district - EOY1)</b>	<b>Unit \$</b>	<b># of Units</b>	<b>Total \$ (EOY1)</b>
Turn-key installation	\$46,810	175	\$8,191,680
<b>subtotals:</b>			\$8,191,680
<b>Programatic Costs (/site)</b>			
Program Management Costs	\$4,680	500	\$2,340,000
Operational Costs	\$1,292	500	\$645,810
<b>subtotals:</b>			\$2,985,810
<b>Expense Totals (EOY1):</b>			\$11,177,490



<b>Cumulative Totals</b>	<b>EOY1</b>	<b>EOY5</b>	<b>EOY10</b>	<b>EOY15</b>	<b>EOY20</b>
Rents & Reimbursements	\$1,668,500	\$8,106,426	\$16,788,464	\$26,244,035	\$36,553,648
Countywide Costs	\$3,285,810	\$10,015,044	\$18,490,149	\$27,044,592	\$35,688,928
Capital Costs	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680
Net Income	(\$9,808,990)	(\$10,100,298)	(\$9,893,365)	(\$8,992,237)	(\$7,326,961)

## **EXHIBIT K**

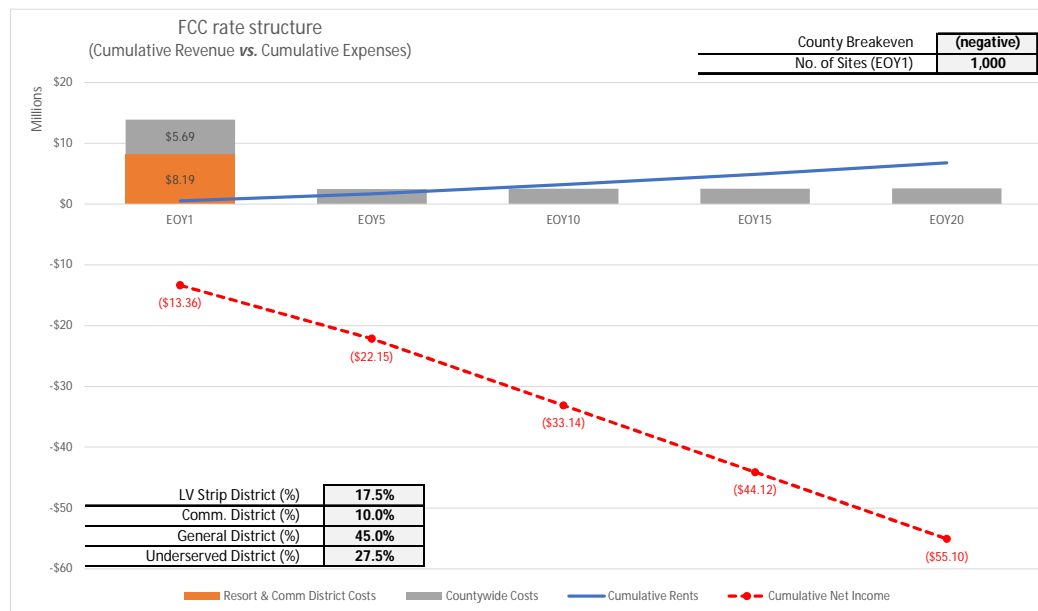
## FCC Rate (1,000 sites)

### Revenues (EOY1)

Recurring Revenue	Unit \$	# of Units	Total \$ (EOY1)
Small Cell Rents (sites per district - EOY1)			
LV Strip District (175 sites)	\$270	175	\$47,250
Comm District (100 sites)	\$270	100	\$27,000
General District (450 sites)	\$270	450	\$121,500
Underserved District (275 sites)	\$270	275	\$74,250
+ annual inspections (1,000 sites)	\$0	1,000	\$0
<b>subtotals:</b>		1,000	\$270,000
	\$270 /yr		
Non-Recurring Revenue (per site)			
Site Application Fees	\$250	1,000	\$250,000
County cost reimbursements	\$0	1,000	\$0
Prog. Mgmt. reimbursements	\$0	1,000	\$0
<b>subtotals:</b>	\$250	1,000	\$250,000
<b>Revenue Totals (EOY1):</b>			\$520,000

### Expenses (EOY1)

Capital Costs (per district - EOY1)	Unit \$	# of Units	Total \$ (EOY1)
Turn-key installation	\$46,810	175	\$8,191,680
<b>subtotals:</b>			\$8,191,680
Programmatic Costs (/site)			
Program Management Costs	\$4,680	1,000	\$4,680,000
Operational Costs	\$709	1,000	\$708,810
<b>subtotals:</b>			\$5,388,810
<b>Expense Totals (EOY1):</b>			\$13,580,490



Cumulative Totals	EOY1	EOY5	EOY10	EOY15	EOY20
Rents & Reimbursements	\$520,000	\$1,655,091	\$3,206,425	\$4,919,223	\$6,810,290
Countywide Costs	\$5,688,810	\$15,616,036	\$28,152,196	\$40,847,031	\$53,721,654
Capital Costs	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680
Net Income	(\$13,360,490)	(\$22,152,626)	(\$33,137,452)	(\$44,119,488)	(\$55,103,044)

## Clark County Adopted Rates (1,000 sites)

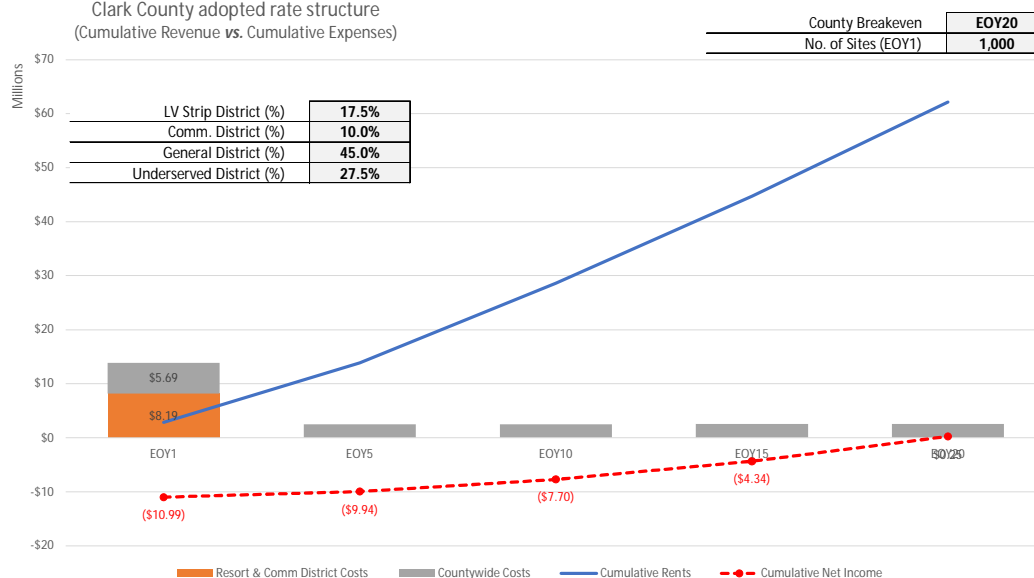
### Revenues (EOY1)

Recurring Revenue		Unit \$	# of Units	Total \$ (EOY1)
Small Cell Rents (sites per district - EOY1)				
LV Strip District (175 sites)	\$3,960	175		\$693,000
Comm District (100 sites)	\$3,960	100		\$396,000
General District (450 sites)	\$1,900	450		\$855,000
Underserved District (275 sites)	\$700	275		\$192,500
+ annual inspections (1,000 sites)	\$500	1,000		\$500,000
<b>subtotals:</b>			1,000	\$2,636,500
Non-Recurring Revenue (per site)				
Site Application Fees	\$250	1,000		\$250,000
County cost reimbursements	\$0	1,000		\$0
Prog. Mgmt. reimbursements	\$0	1,000		\$0
<b>subtotals:</b>			1,000	\$250,000
<b>Revenue Totals (EOY1):</b>				\$2,886,500

### Expenses (EOY1)

Capital Costs (per district - EOY1)		Unit \$	# of Units	Total \$ (EOY1)
Turn-key installation				
	\$46,810	175		\$8,191,680
<b>subtotals:</b>				\$8,191,680
Programatic Costs (/site)				
Program Management Costs	\$4,680	1,000		\$4,680,000
Operational Costs	\$709	1,000		\$708,810
<b>subtotals:</b>				\$5,388,810
<b>Expense Totals (EOY1):</b>				\$13,580,490

Clark County adopted rate structure  
(Cumulative Revenue vs. Cumulative Expenses)



### Cumulative Totals

	EOY1	EOY5	EOY10	EOY15	EOY20
Rents & Reimbursements	\$2,886,500	\$13,868,432	\$28,644,079	\$44,697,385	\$62,161,331
Countywide Costs	\$5,688,810	\$15,616,036	\$28,152,196	\$40,847,031	\$53,721,654
Capital Costs	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680	\$8,191,680
Net Income	(\$10,993,990)	(\$9,939,285)	(\$7,699,797)	(\$4,341,325)	\$247,997

## **EXHIBIT L**

**CLARK COUNTY, NEVADA**

**Business Impact Statement**

**(NRS 237.090)**

**Clark County Code Title 5, Chapter 5.02 (Rights-Of-Way Management - Wireless Communications Facilities)**

Upon request, a copy of the Business Impact Statement can be obtained from the Clark County Department of Business License and such requests should be sent to:

Clark County Department of Business License  
Chapter 5.02  
500 S. Grand Central Pky., 3<sup>rd</sup> Flr  
Box 551810  
Las Vegas, NV 89155-1810

or a copy may be obtained from the following website:

[www.clarkcountynv.gov/businesslicense](http://www.clarkcountynv.gov/businesslicense).

**Description of the proposed ordinance or rule:**

The proposed amendments to Chapter 5.02 will:

1. Standardize and make consistent provisions that currently reside in multiple, separate agreements that have been approved over many years. Common provisions that affect all Licensees of Wireless Communications Facilities in the County's Rights-of-Way may be revised easier and more responsively to address changes in technology rather than amending individual agreements.
2. Require persons that wish to install and operate Wireless Communications Facilities in the Rights-of-Way (ROW) to first obtain a Master Wireless Communications License Agreement (MLA).
3. Establish Rights-of-Way Design Districts and design standards for Wireless Communications Facilities within each of the districts.
4. Establish rates for the use of the County's Rights-of-Way for the installation and operation of wireless communications facilities in each ROW Design District.



**Intent of the proposed ordinance or rule including issues to be resolved or other factors to be considered:**

The intent of this proposed ordinance is to establish a policy concerning Rights-of-Way management for Wireless Communications Facilities; permit and manage reasonable access, in an equitable manner, to Rights-of-Way in unincorporated Clark County for Wireless Communications Facilities; manage the physical capacity of the Rights-of-Way held in public trust by the County; establish design standards to provide for a consistent and aesthetically pleasing appearance of Wireless Communications Facilities in the County Rights-of-Way within specific, defined districts; recover public costs of permitting private use of County Rights-of-Way; and ensure that all providers of Wireless Communications Facilities within the County comply with all ordinances, rules and regulations of the County.

**Description of the manner in which public comment, data or arguments was solicited from affected businesses and/or community stakeholders:**

A meeting was held on September 20, 2018 with the wireless communications industry to present the high-level concepts of the proposed ordinance and to receive feedback and comments. Subsequently, three additional meetings were held on October 15 and 16, 2018, with the third-party tower companies, the wireless service providers and with technical staff of the wireless industry to discuss specific provisions of the proposed ordinance and to receive feedback and comments. In addition to these discussions, on October 4, 2018, the County sent a Notification of Proposed Amendments to Clark County Code, Title 5, Chapter 5.02 (Notification Letter, Attachment #1) to representatives of the wireless tower companies, the wireless service providers and other interested parties. The Notification and proposed ordinance were also available on the Department of Business License's website. Recipients of the Notification Letter were encouraged to respond with any comments or concerns regarding the proposed ordinance.

**Summary of public comment, data or arguments including the number of public comments received:**

Public comments were received by the Department of Business License through written correspondence and discussions between staff and stakeholders.

**COMMENTS RECEIVED FROM THE INDUSTRY MEETINGS HELD ON  
SEPTEMBER 20, 2018**

The following questions and comments were received during the meeting with the wireless communications industry that occurred on September 20, 2018:

1. There was a request that the proposed ordinance not be considered by the County until after a pending FCC ruling that was scheduled to be heard by the FCC on September 26, 2018.

2. A question was raised as to why there is a fee based on gross receipts and an annual rental fee.
3. An attendee asked whether there will be a limit on the number of carriers or transmission equipment regarding neutral hosts or collocated poles.
4. Another attendee asked who determines whether a County facility is functionally suitable.
5. An attendee stated that the 600-foot distance requirement is somewhat preemptive and more restrictive and the distance should be as little as 300 feet.
6. Another attendee asked how this new ordinance will affect existing sites in the Rights-of-Way.
7. The proposed remediation date of December 31, 2019 was questioned as to the time by which all existing sites must be brought into compliance with the new ordinance, since that would, according to an attendee, require removing some of the Licensee's customers because some sites have more than one carrier.
8. Another attendee commented that the design guidelines in the proposed ordinance seem rigid and changes in the design of equipment over the years could present challenges in the future and the main concern being the timeliness of approval of sites.
9. Another attendee wanted to know how the 5% gross revenue fee was derived and if there are any situations elsewhere that have a fee based on gross revenue and a site license fee.
10. There was a concern mentioned regarding the distance between facilities with respect to the future 5G technology.
11. A statement was made that there is a lot more to discuss and recommended that more work sessions be scheduled to discuss the particulars of the Wireless Communications Facilities, especially concerning multi-carrier poles with two carriers and the limiting of antennas.
12. A attendee stated that the remediation timeline is very problematic, unless it is being done during an upgrade and that the non-compliant sites possibly need to be grandfathered for a period longer than December 31, 2019.
13. Another attendee expressed concern over the proposed sublease provisions that indicate that the County can deny a sublease at any time.
14. Another attendee recommended the formation of a user group in the industry that would meet more frequently so that as changes in technology and equipment occur and the industry's demands change, the County can be able to better understand the issues that affect this industry.



## **COMMENTS RECEIVED FROM THE INDUSTRY MEETINGS HELD ON OCTOBER 15 - 16, 2018**

The following comments were received during the three meetings with the wireless communications industry that occurred on October 15 and 16, 2018:

1. The fees in general are too high and should be based on rational costs. The inspection fees should be charged only after an inspection of a specific site has failed.
2. The distance between a Licensee's Wireless Communications Facilities should be reduced from 600 feet to 150 feet or 0 feet.
3. Incentive agreements may not be available to some smaller companies that have limited capital or ability to take advantage of the offered incentives.
4. An incentive to third-party licensees does not translate to any savings to the wireless carriers.
5. There is a need to clarify whether the distance restrictions are between licensees or between providers.
6. If there is collocation on a pole, there needs to be a method by which the first licensee can recover some of its costs that it incurred to replace or modify the pole to accommodate a second licensee when the second license wants to install Equipment or Facilities on that pole.
7. As a telecommunications company, Cox does not believe it should have to comply with the distance restrictions for its strand-mounted facilities in the Rights-of-Way.
8. The remediation deadline is too restrictive and instead of a specific date, remediation should be as equipment is naturally replaced or upgraded.
9. Two carriers per pole may not work.
10. The design guidelines should not be in the Code, but in a separate guide giving more flexibility to be able to make changes as technology changes. The County manager could approve exceptions.
11. After an MLA is signed there should be nothing else required for applying for specific installation sites that would require a signature. Agreements that require signatures are very time-consuming for the Licensees as they may have to be routed through many departments of the License's organization for approval. The SLA should be consolidated with the encroachment permit.

12. The design standards should outline the parameters of the antennas and equipment rather than requiring specific dimensions.
13. Maybe there should be no limit in the number of carriers on a pole as long as the pole has the structural capacity and the facilities look aesthetically pleasing.
14. Shared antennas and painted or concealed antennas will not work with 5G technology.

### **COMMENTS RECEIVED FROM THE OCTOBER 4, 2018 NOTIFICATION LETTER**

The following comments were received in response to a notification letter that was sent to the wireless industry and interested parties dated October 4, 2018, regarding the proposed ordinance:

#### **Response #1 – (Attachment #2)**

An e-mail was received from Verizon with an attached letter indicating that it represents combined comments from Verizon, AT&T, T-Mobile, Mobilitie, Crown Castle, ExteNet Systems and Cox. The e-mail urges the County to comply with federal law, stating that “a local regulation that conflicts with federal law will stall or deter the deployment of wireless technology.” Attached to this e-mail was a copy of the proposed ordinance with recommended revisions. Neither the e-mail nor the industry-revised ordinance indicate whether the proposed ordinance provisions: (a) impose a direct and significant economic burden upon a business, or (b) directly restrict the formation, operation or expansion of a business. The following issues were suggested for revision and some may be considered by the industry as imposing a direct and significant economic burden upon a business or directly restricting the formation, operation or expansion of a business:

1. Allowing the installation of small cell antennas and equipment on decorative streetlight poles without prior approval from the County.
2. Allowing the installation of small cell antennas and equipment on traffic light and signage poles.
3. Removing the definition of gross revenue and eliminating the use fee of 5% on gross revenue entirely.
4. Changing the definition of “wireless service provider” to include the third-party tower companies that are not the actual providers of the wireless services.
5. Adding the following timelines by which the County must approve a Master Wireless Use License Agreement (MLA): 60 days if the applicant for the MLA is intending to only use existing structures in the Rights-of-Way, or 90 days if the MLA is intending to use new structures in the Rights-of-Way.



6. Changing the wireless site license fees from quarterly to annually with the renewal coinciding with the anniversary of the Wireless Site License Agreement (SLA).
7. Revising the requirement that existing sites must come into compliance with the proposed ordinance by a certain date to the date that the Facility is modified in such a way that causes a new SLA to be submitted.
8. Requiring concealment of antennas, equipment, cables and lines to the extent that it is technically feasible.
9. Eliminating the multicarrier pole definition.
10. The proposed ordinance provides that a Licensee may install a new pole if it is unable to find an available structure in the ROW within 700 feet. The industry proposal would reduce that distance to 100 feet.
11. The proposed ordinance provides that a Licensee may not install a Facility if it is within 600 feet of another Facility installed by that Licensee. The industry proposal would reduce that distance to 100 feet.
12. The proposed ordinance creates ROW design districts and establishes specific design standards within each district. The industry proposal suggests that the design standards not be codified, but instead be considered on a case-by-case basis.
13. The height limit of a Facility in the proposed ordinance is 5 feet above the existing structure. The industry proposal would increase that distance to 10 feet.
14. Eliminating the encroachment permit fee in lieu of the site license fee.
15. Changing the time to commence operations to 1 year from the date an SLA is approved instead of 9 months as stated in the proposed ordinance.
16. The proposed ordinance states that a Licensee must relocate one or more of its Facilities at the County's direction upon 60 days' prior written notice. The industry proposal would increase that time to 180 days.
17. The proposed ordinance states that a Licensee must remove, repair or replace any of its equipment that has not been used after the initial installation for a period of 90 days. The industry proposal would be to increase that time to 180 days.
18. Changing the wireless site license fee from the proposed minimum of \$700 to a maximum of \$3,960 per pole per year, depending on the design district in which the site is located, to \$270 per pole per year in every district.
19. Eliminating the application fee for the MLA of \$1,000 and change the application fee for the SLA from \$250 per site to \$500 for the first 5 sites and \$100 per site thereafter.

20. Eliminating the remediation non-compliance fee of \$500 for every 30 days a site remains noncompliant after the date that the site must be compliant.
21. Requiring the County to indemnify the Licensee from all damages caused by negligence, willful misconduct or intentional actions of the County.
22. Reducing the security deposit from \$75,000 to \$25,000.
23. The proposed ordinance provides for the increase in the security bond amount upon renewal of the MLA based on the change in the CPI since the initial date of the MLA or last renewal. The industry proposal would eliminate this increase.
24. The proposed ordinance requires that the insurance provider of the Licensee shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). The industry proposal would reduce the Financial Size Category to "VII", which is \$50,000,000 to \$100,000,000.
25. Several revisions were suggested to clarify certain provisions or to make grammatical corrections.

## **Response #2 – (Attachment #3)**

A letter dated September 20, 2018, that was initially received prior to the industry meeting on that same day, has been re-submitted by Verizon to be considered as a response to the Business Impact Statement from Verizon Wireless specifically. The commenter states that while Verizon believes that the County plays a pivotal role in managing the use of its Rights-of-Way and that Verizon does not oppose adoption of an ordinance to accomplish the County's legitimate objectives, it has concerns relating to several provisions in the ordinance that Verizon believes are in conflict with federal law and would materially inhibit the deployment of next generation wireless technologies in the County. The comments and concerns in this letter are as follows:

1. ROW Design Standards – It is Verizon's position that many of the design standards violate Sections 253 and 332 of the Telecommunications Act by effectively prohibiting the provision of personal wireless services, such as the following requirements:
  - a. The minimum 700-foot radius requirement for locating a Facility on an available Municipal Facility,
  - b. Only multi-carrier poles are allowed in the Las Vegas Boulevard District and all equipment must be contained in the interior of the pole,
  - c. All antennas and equipment must be contained in the interior of the poles located within the Central Communication District,
  - d. All antennas must be at least 15 feet above the ground and all equipment at least 8 feet above the ground, and



- e. The requirement that antennas be concealed within a pole (Verizon believes that this would prohibit the use of antennas and related equipment which are currently required for 5G deployment).
2. Applicable Fees – The fees contained in the proposed ordinance, according to the commenter, constitute an effective prohibition in providing personal wireless services and they do not appear to be reasonably related to costs that will be incurred by the County to manage its public Rights-of-Way.
3. Application of proposed ordinance to Existing Facilities – The requirement to bring any wireless communications facility in the Right-of-Way into compliance with the requirements of this ordinance by December 31, 2019, or pay a non-compliance fee is, in the commenter’s opinion, prohibited by federal and state law, especially in light of the fact that Verizon Wireless has an active agreement with the County and all existing facilities were installed in compliance with the previously established and published standards and requirements.

### **Response #3 – (Attachment #4)**

An e-mail was received from AT&T with an attached study and report from Accenture Strategy entitled “Accelerating Future Economic Value from the Wireless Industry” that was submitted as its response to the Business Impact Statement. The following quote from the report was emphasized by AT&T:

“Modernizing rules for the deployment of small cells in Public Rights of Way through streamlining permitting and processes, and creating reasonable fee structures will help with deployment timelines. Currently, many applications for small-cell implementations can take up to 18 to 24 months for approval, and can involve time-consuming pole-by-pole assessments which leave plenty of room for improvement. Present processes can divert both time and capital investment away from network deployment. Reducing these deployment barriers has tangible financial impacts.”

The report also states that “unlocking the full potential of 5G depends on two key actions: spectrum availability and modernization of infrastructure guidelines” and that “accelerating infrastructure deployment by one year could drive an additional \$100 billion in economic impact in the next three years.”

### **The estimated economic effect of the proposed ordinance or rule on businesses:**

#### **1. Adverse effects**

The proposed ordinance will require wireless communications licensees to comply with design standards when installing wireless communications facilities in the County’s

Rights-of-Way, including distance restrictions, and to pay additional fees for the use of the Rights-of-Way.

## **2. Beneficial effects**

The proposed ordinance will standardize and provide consistency to the management of the County's Rights-of-Way relating to placement and operation of wireless communications facilities. The design standards will be established and published in advance so that Licensees will know what is expected in the way of aesthetic requirements. The ordinance provides for cost allocation and recovery when more than one Licensee installs equipment on the same pole.

## **3. Direct effects**

The direct effects of the proposed amendments are that the aesthetic and other requirements will be consistent and published in advance so that Licensees will know what is expected in regards to installation of Wireless Communications Facilities in the County's Rights-of-Way.

## **4. Indirect effects.**

Currently the provisions that govern how each Licensee shall install and operate Wireless Communications Facilities within the County's Rights-of-Way are contained in multiple, separate agreements that have been written over the period of several years and not all of the conditions and terms are consistent in each agreement. By establishing many of these common provisions in the County Code, these provisions will be consistent among all Licensees and when a revision or modification is needed, as technology changes, the Code can be amended thereby affecting all Licensees equally and at the same time. Also, the time it takes to negotiate, draft and approve a standardized Master Wireless License Agreement is greatly reduced.

## **5. Other economic effects to be considered.**

No other economic effects were identified.

### **The estimated cost to the local government for the enforcement of the proposed ordinance or rule:**

With the adoption of this ordinance, the County intends to monitor more closely the installations of wireless communications facilities within its Rights-of-Way to ensure compliance with design standards and to ensure that the antennas and equipment that were approved by the County are the antennas and equipment that have been installed by the Licensee. This will require a greater effort on the County to inspect the Licensees' Facilities and notify the Licensees of any noncompliance issues. The County will incur additional expenses for the increased enforcement of this proposed ordinance which cannot be estimated at this time; however, the additional revenue provided in this ordinance is expected to cover any additional costs for enforcement.



**The estimated cost to the local government for the administration of the proposed ordinance or rule:**

With the adoption of this ordinance the County intends to establish a wireless broadband management program that provides the wireless communications licensees with a more streamlined application process for requesting specific sites for the deployment of their facilities that tracks the approval process through a workflow process. This will require a greater effort on the County to maintain certain data on each site used by the licensees that will allow more accurate billing of the individual sites. The County will incur additional expenses for the increased administration of this proposed ordinance which cannot be estimated at this time; however, the additional revenue provided for in this ordinance is expected to cover any additional costs for administration.

**If applicable, explanation of a new fee or increase to an existing fee including a projection of the annual revenue expected to be collected and the manner in which the revenue will be utilized:**

The new fees created by this ordinance are based on the number of small cell sites that are installed in the County's Rights-of-Way, which cannot be determined at this time. However, the revenue derived from the use fees and site license fees are anticipated to sufficiently fund the administration and enforcement of this ordinance as well as providing funds for enhancement and expansion of the County's infrastructure that is necessary for the advancement of wireless services to areas that are underserved or are lacking such services.

**Assessment of provisions of the proposed ordinance or rule, which may duplicate or are more stringent than Federal, State or local standards regulating the same activity:**

Certain provisions of the proposed ordinance may be considered more stringent than a regulation that was adopted by the Federal Communications Commission on September 26, 2018, titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" (FCC 18-133) ("FCC Order"). The Order contains several provisions that intend to limit or restrict local governments in certain areas such as fees, aesthetic requirements, distance restrictions and approval timelines. The effective date of the Order is January 19, 2019, but there have been a number of legal actions filed by various governments and other groups challenging the FCC's authority to impose such restrictions. Requests to stay the implementation of the Order during the pendency of the legal actions have been filed and the length of time to resolve the pending legal actions is unknown at this time.

**If applicable, explanation of why the duplicative or more stringent provisions are necessary:**

The FCC Order that was adopted on September 26, 2018 and becomes effective on January 19, 2019 contains very specific guidelines as to how much control a local government has over wireless communications licensees utilizing the public Rights-of-Way and how limited a local government is in requiring aesthetical standards, including distance restrictions. However, the



more restrictive fees and requirements contained in this proposed ordinance are necessary in order to provide the site approval services to the wireless industry that will allow them to deploy their facilities more timely and to maintain aesthetic standards that do not distract from the visual appearance of the Rights-of-Way. There have been a number of legal actions taken by other local governments in opposition to many of the provisions of the FCC Order that will take time for the legal issues to be resolved. In the meantime, the County needs to plan for the immediate future especially since the deployment of 5G technology is imminent.

**Description of the methods that local government considered to modify the proposed ordinance or rule; or otherwise reduce the impact of the proposed rule on businesses, the parties involved, and a statement of the methods used:**

Notification of the proposed amendments was distributed to the wireless communications companies that currently have a Wireless Use License Agreement with the County, with wireless service providers that do not have such an agreement with the County, and other interested parties so the concerns of all parties involved could be solicited.

Based on comments and concerns received, modifications to the original proposed amendments have been made as follows:

1. An effective date of the ordinance of July 1, 2019 was added to allow sufficient time to transition to the Master Wireless License Agreements and to implement the provisions of this proposed ordinance.
2. The original date of December 31, 2019, by which the remediation of existing Facilities were to come into compliance with the proposed ordinance has been extended as follows: for sites within the Las Vegas Boulevard District - the date that coincides with the completion of the Public Works / Las Vegas Water District project to repave Las Vegas Boulevard or by December 31, 2023, whichever is later; for sites within the Central Communication District – by December 31, 2021; and for sites within all other Districts – by the date that the equipment for each site is upgraded or replaced.
3. Shared antennas will only be required to the extent that they are technologically feasible and commercially available.
4. If a Municipal Facility is replaced by a Licensee that includes a lighting fixture the requirement that the replacement include exact lighting fixtures has been changed to be exact or substantially similar with approval from Public Works.
5. The requirement that antennas and equipment must be completely concealed has been changed to be concealed to the extent technologically feasible considering that the antennas and equipment for 5G technology are still be developed and may not be able to be completely concealed.
6. The distance for the requirement that a Licensee must use a Municipal Facility has been reduced from 700 feet of the proposed location to 600 feet.



7. The time requirements for certain activities have been extended, such as the time in which a Licensee is required to commence operation of a small cell site has been increased from 9 months to one year and the requirement to submit an application for an SLA for a location at which unauthorized Equipment was discovered has been increased from 3 months to 6 months.
8. Provisions for cost allocation have been added to the proposed ordinance for situations where a licensee incurs expenses in replacing or modifying a pole to accommodate a second licensee and wishes to recover some of those expenses when a second licensee wants to install equipment on that pole.
9. The distance for the requirement that a Licensee must not install another Facility on a Municipal Facility has been reduced from 600 feet to 300 feet.
10. The size limitations for antennas and equipment have been changed from specific dimensions to volume capacities of a maximum of 6 cubic feet for antennas and a maximum of 24 cubic feet for equipment.
11. The site license fees for the Residential, Commercial and Manufacturing Districts have been reduced from \$2,500 per pole per year to \$1,900 per pole per year.
12. The annual fee adjustment of 3% has been reduced to 2% and the effective date of the annual fee adjustment has been extended from July 1, 2019 to July 1, 2020.
13. The administrative charge for work performed by the County on the Licensee's behalf has been reduced from 25% of the actual costs incurred by the County to 15% as suggested by the industry.
14. The definition and requirements for strand mounted facilities were removed from the proposed ordinance as these facilities are installed on facilities generally owned by public utilities.
15. At the suggestion of the industry, we have included a provision that specifically does not prohibit a Licensee from pursuing a claim against a third party that causes any damage to its Equipment installed in the ROW or on Municipal Facilities.

In addition to the above revisions to the proposed ordinance, the comments included many revisions that are intended to clarify certain provisions or grammatical corrections. Many of these recommended revisions have been made.

Some of the suggested changes to the proposed ordinance that were not made include the following:

1. The inclusion of "traffic light poles and signage Poles" in the definition of "Municipal Facilities" was not made for public safety reasons as these types of poles have a direct impact on the flow of traffic and traffic safety. If a traffic light pole were to lose power



due to the operations of a Wireless Communications Facility the impact on the public would be much greater than if a street light were to fail.

2. The inclusion of a person that “builds, installs, and/or maintains Wireless Communications Facilities on behalf of a Person who provides Personal Wireless Services” in the definition of “Wireless Service Provider” was not made as such a person does not actually provide wireless services to the public or end user.
3. The requirement that, in the case of an emergency, and it becomes necessary for the County to remove any of the Licensee’s Equipment, no charge shall be made by the Licensee to the County for any loss, damage, restoration or repair only when the emergency involves the immediate threat of harm to persons or property was not made, since these situations exist which constitute emergencies that do not constitute immediate direct threats or harm to persons or property such as a downed pole blocking traffic that requires immediate removal.
4. The suggestion of eliminating the use fee that is based on gross revenue and reducing the Wireless Site License Fees in all ROW Design Districts to \$270 per pole per year was not made as the County will be incurring additional costs in implementing a wireless communication policy concerning the management of the County’s Rights-of-Way that will include permitting, enforcement, and maintenance of the Rights-of-Way.

**The reasons for the conclusions regarding the impact of the proposed rule on businesses:**

The report that was submitted by AT&T (Attachment #4) as its response to this Business Impact Statement states that, “given that 5G connectivity will require a system of wireless infrastructure significantly denser than that required by 4G, **modernization of infrastructure guidelines** will be key to decreasing the time required for a 5G network rollout. Recognizing that 300,000 small cells need to be deployed in the next three to four years – roughly double the number of macro towers built over the past 30 years – current approval processes pose a challenge.” The report goes on to say, “accelerating 5G deployment approval timelines by just one year could add over \$100 billion to the U.S. economy within the next three years.”


In order for the County to be prepared to meet this significant increase in the demand for small cell site locations within the County’s Rights-of-Way, the County needs to plan now for a robust program to manage these sites and the County’s assets in the Rights-of-Way and the County will need to cover the increased costs related to this effort.

The proposed amendments provide benefits to the wireless service providers by establishing a standard permitting and approval process and establishing provisions that affect every Licensee consistently. The aesthetic and other requirements are published in advance to aid the licensee in planning their network deployment. Although, this ordinance does impose higher fees, they are offset by the benefits of improved, streamlined administration and enforcement of the County’s Rights-of-Way, encouragement of the development of services in areas that are underserved or not served, and protection of public safety and public resources, and does not impose a direct and

significant economic burden upon a business or directly restrict the formation, operation or expansion of a business.

**Certification of Business Impact Statement**

I certify that, to the best of my knowledge or belief, the information contained in this Business Impact Statement was prepared properly and is accurate.

  
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Yolanda King  
County Manager

11/19/2018  
Date